



MISSISSIPPI CODE 1972
Annotated

Public Health

Title 41

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VOLUME 11

TITLE 41

PUBLIC HEALTH

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME ELEVEN

PUBLIC HEALTH

§§ 41-1-1 to 41-115-1

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2009 REGULAR LEGISLATIVE SESSION
AND THE 1ST THROUGH 3RD EXTRAORDINARY SESSIONS



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4454113

ISBN 978-1-4224-5910-2 (Volume 11)
ISBN 978-0-3270-9628-3 (Code set)



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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2009 Replacement Volume 11 of the Mississippi Code of 1972 Annotated represents material appearing in both the original 1973 bound volume, the 2001 Replacement Volume 11, and the 2005 Replacement Volume 11, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2009 Regular Legislative Session and the 1st through 3rd Extraordinary Sessions.

This volume contains the text of Title 41, of the Mississippi Code of 1972 Annotated, as amended through the 2009 Regular Legislative Session and the 1st through 3rd Extraordinary Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates up to February 10, 2009, and decisions of the appropriate federal courts with decision dates up to December 23, 2008. These cases will be printed in the following reporters:

- Southern Reporter, 2nd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal.

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22906-5389.

October 2009

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User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

- Advance Code Service
- Advance Sheets
- Amendment Notes
- Analyses
- Attorney General Opinions
- Code Status
- Comparable Legislation from other States
- Court Rules
- Cross References
- Editor's Notes
- Effective Dates
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- Index
- Joint Legislative Committee Notes
- Judicial Decisions
- Organization and Numbering System
- Placement of Notes
- Replacement Volumes
- Research and Practice References
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- Statute Headings
- Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, P.O. Box 7587, Charlottesville, VA 22906-7587.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and

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approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooper-

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ation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States and Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

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FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note

will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indentation scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

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RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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GENERAL OUTLINE OF TITLES AND CHAPTERS

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CHAPTER 1

Mississippi Department of Public Health [Repealed]

§§ 41-1-1 through 41-1-17. Repealed.

Repealed by Laws 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1906, §§ 1640-1647; Hemingway's 1917, §§ 4818-4824; 1930, §§ 4860-4867; 1942, §§ 7016-7023.5; Laws, 1897, ch. 15; Laws, 1970, ch. 363, § 4]

Editor's Note — Former §§ 41-1-1 through 41-1-17 created the Mississippi Department of Public Health.

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- 41-3-49. Powers and duties of director.
- 41-3-51. Records and reports of director.
- 41-3-53. Maintenance of county department of health.
- 41-3-55. Repealed.
- 41-3-57. Municipal regulation of health.
- 41-3-59. Violation of health rules.

§ 41-3-1. Repealed.

Repealed by Laws, 2007, ch. 514, § 1, eff March 30, 2007.

§ 41-3-1. [Codes, 1892, § 2267; 1906, § 2482; Hemingway's 1917, § 4831; 1930, § 4868; 1942, § 7024; Laws, 1926, ch. 310; Laws, 1960, ch. 351, § 1; Laws, 1966, ch. 456, § 1; Laws, 1972, ch. 336, § 1; Laws, 1977, ch. 377; Laws, 1980, ch. 465, § 1; reenacted without change, Laws, 1982, ch. 494, § 1; reenacted, Laws, 1990, ch. 568, § 1; reenacted without change, Laws, 1994, ch. 462, § 1; reenacted, Laws, 1995, ch. 363, § 1; reenacted without change, Laws, 2001, ch. 420, § 1; Laws, 2003, ch. 542, § 1, eff from and after July 1, 2003.]

Editor's Note — Former § 41-3-1 provided for the organization of the State Board of Health. For reconstitution of the State Board of Health, see § 41-3-1.1.

RESEARCH REFERENCES

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§ 41-3-1.1. Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective June 30, 2010].

(1) The State Board of Health is continued and reconstituted as follows:

There is created the State Board of Health which, from and after March 30, 2007, shall consist of eleven (11) members appointed with the advice and consent of the Senate, as follows:

(a) Five (5) members of the board shall be currently licensed physicians of good professional standing who have had at least seven (7) years' experience in the practice of medicine in this state. Three (3) members shall be appointed by the Governor, one (1) member shall be appointed by the Lieutenant Governor, and one (1) member shall be appointed by the Attorney General, in the manner provided in paragraph (d) of this subsection (1).

(b) Six (6) members of the board shall be individuals who have a background in public health or an interest in public health who are not currently or formerly licensed physicians. Four (4) of those members shall be appointed by the Governor, one (1) of those members shall be appointed by the Lieutenant Governor, and one (1) of those members shall be appointed by the Attorney General, in the manner provided in paragraph (d) of this subsection (1).

(c) The Governor, Lieutenant Governor and Attorney General shall give due regard to geographic distribution, race and gender in making their appointments to the board. It is the intent of the Legislature that the

membership of the board reflect the population of the State of Mississippi. Of the Governor's appointments, one (1) member of the board shall be appointed from each of the four (4) congressional districts as constituted on June 30, 2007, and one (1) member of the board shall be appointed from each of the three (3) Supreme Court districts as constituted on June 30, 2007. Of the Lieutenant Governor's appointments, one (1) member of the board shall be appointed from the First Congressional District and one (1) member of the board shall be appointed from the Fourth Congressional District as constituted on June 30, 2007. Of the Attorney General's appointments, one (1) member of the board shall be appointed from the Second Congressional District and one (1) member of the board shall be appointed from the Third Congressional District as constituted on June 30, 2007.

(d) The initial members of the board shall be appointed for staggered terms, as follows: Of the Governor's appointments, two (2) members shall be appointed for terms that end on June 30, 2009; two (2) members shall be appointed for terms that end on June 30, 2011; and three (3) members shall be appointed for terms that end on June 30, 2013. Of the Lieutenant Governor's appointments, one (1) member shall be appointed for a term that ends on June 30, 2009; and one (1) member shall be appointed for a term that ends on June 30, 2013. Of the Attorney General's appointments, one (1) member shall be appointed for a term that ends on June 30, 2009; and one (1) member shall be appointed for a term that ends on June 30, 2011.

A member of the board serving before January 1, 2007, shall be eligible for reappointment to the reconstituted board unless the person is disqualified under subsection (4) of this section.

(2) At the expiration of the terms of the initial members, all members of the board shall be appointed by the Governor, in the same manner and from the same districts prescribed in subsection (1) of this section, for terms of six (6) years from the expiration of the previous term and thereafter until his or her successor is duly appointed. Vacancies in office shall be filled by appointment in the same manner as the appointment to the position that becomes vacant, subject to the advice and consent of the Senate at the next regular session of the Legislature. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term and thereafter until his or her successor is duly appointed.

(3) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the State Board of Health. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend the meetings of the board. Those legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be

paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

(4)(a) All members of the State Board of Health shall file with the Mississippi Ethics Commission, before the first day of May each year, the statement of economic interest as required by Sections 25-4-25 through 25-4-29.

(b) No member of the board shall participate in any action by the board or department if that action could have any monetary effect on any business with which that member is associated, as defined in Section 25-4-103.

(c) When any matter in which a member may not participate comes before the board or department, that member must fully recuse himself or herself from the entire matter. The member shall avoid debating, discussing or taking action on the subject matter during official meetings or deliberations by leaving the meeting room before the matter comes before the board and by returning only after the discussion, vote or other action is completed. The member shall not discuss the matter with other members, department staff or any other person. Any minutes or other record of the meeting shall accurately reflect the recusal. If a member is uncertain whether recusal is required, the member shall follow the determination of the Mississippi Ethics Commission. The commission may delegate that determination to its executive director.

(d) Upon a determination by the board or by any court of competent jurisdiction that a member of the board has violated the provisions of this subsection (4) regarding recusal, the member shall be removed from office. Any member of the board who violates the provisions of this section regarding recusal also shall be subject to the penalties set forth in Sections 25-4-109 through 25-4-117. After removal from office, the member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years. Nothing in this section shall be construed to limit the restrictions codified in Section 25-4-105.

SOURCES: Laws, 2007, ch. 514, § 2, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References — Mississippi Ethics Commission generally, see §§ 25-4-1 et seq. Conflicts of interest generally, see §§ 25-4-101 et seq.

Executive officer to head State Board of Health, see § 41-3-5.1.

General powers and duties of executive officer, see § 41-3-15.

General powers and duties of the State Board of Health, see § 41-3-15.

Duties of department as lead agency for Early Intervention Act for Infants and Toddlers, see §§ 41-87-1 et seq.

Duties and responsibilities of state board of health in the regulation of hearing aid dealers, see §§ 73-14-1 et seq.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see § 73-24-1 et. seq.

§ 41-3-3. Oath of members [Repealed effective June 30, 2010].

Each person appointed as a member of the State Board of Health shall immediately take the oath prescribed by Section 268 of the Constitution and file a certificate thereof in the Office of the Secretary of State. Thereupon a commission shall be issued to him under the terms as specified in Section 41-3-1.

SOURCES: Codes, 1892, § 2268; 1906, § 2483; Hemingway's 1917, § 4832; 1930, § 4869; 1942, § 7025; Laws, 1924, ch. 313; reenacted without change, Laws, 1982, ch. 494, § 2; reenacted, Laws, 1990, ch. 568, § 2; reenacted without change, Laws, 1994, ch. 462, § 2; reenacted, Laws, 1995, ch. 363, § 2; reenacted without change, Laws, 2001, ch. 420, § 2; reenacted without change, Laws, 2007, ch. 514, § 3, eff from and after June 30, 2007.

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment reenacted the section without change.

Cross References — Official oath, generally, see §§ 25-1-9, 25-1-11.

§ 41-3-4. Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective June 30, 2010].

(1) There shall be a Chairman and Vice Chairman of the State Board of Health elected by and from its membership at the first meeting of the board; and the chairman shall be the presiding officer of the board. The chairman shall always be a physician member of the board. The board shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. The board shall meet not less frequently than once each quarter, and at such other times as determined to be necessary. The term of office of any member who does not attend three (3) consecutive regular meetings of the board shall be automatically terminated, and the position shall be considered as vacant, except in cases of the serious illness of a board member or of his or her immediate family member. All meetings of the board shall be called by the chairman or by a majority of the members of the board, except the first meeting of the initial members of the reconstituted board, which shall be called by the Governor.

(2) The members of the board shall receive no annual salary but shall receive per diem compensation as is authorized by law for each day devoted to the discharge of official board duties and shall be entitled to reimbursement for

all actual and necessary expenses incurred in the discharge of their duties, including mileage as authorized by Section 25-3-41.

SOURCES: Laws, 1980, ch. 465, § 2; Laws, 1980, ch. 560, § 31; reenacted without change, Laws, 1982, ch. 494, § 3; reenacted, Laws, 1990, ch. 568, § 3; reenacted without change, Laws, 1994, ch. 462, § 3; reenacted, Laws, 1995, ch. 363, § 3; reenacted without change, Laws, 2001, ch. 420, § 3; reenacted and amended, Laws, 2007, ch. 514, § 4, eff from and after June 30, 2007.

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment reenacted and amended the section by, in (1), adding the second and fourth sentences, rewriting the fifth sentence, and substituting “initial members of the reconstituted board” for “original appointees” in the last sentence.

Cross References — For provision authorizing uniform per diem compensation of officers and employees of state boards, commissions and the like, see § 25-3-69.

§ 41-3-5. Repealed.

Repealed by Laws of 2007, ch. 514, § 1, eff June 30, 2007.

§ 41-3-5. [Codes, 1892, § 2269; 1906, § 2484; Hemingway's 1917, § 4833; 1930, § 4870; 1942, § 7026; Laws, 1924, ch. 313; Laws, 1944, ch. 270; Laws, 1948, ch. 395, § 1; Laws, 1958, ch. 360; Laws, 1966, ch. 445, § 19; Laws, 1977, ch. 404; Laws, 1978, ch. 520, § 10; Laws, 1980, ch. 465, § 3; reenacted and amended, Laws, 1982, ch. 494, § 4; reenacted, Laws, 1990, ch. 568, § 4; reenacted without change, Laws, 1994, ch. 462, § 4; reenacted, Laws, 1995, ch. 363, § 4; reenacted without change, Laws, 2001, ch. 420, § 4, eff from and after June 30, 2001.]

Editor's Note — Former § 41-3-5 related to the election, qualifications, authority and responsibilities of the executive officer of the State Board of Health.

For repeal date of this section, see § 41-3-20; a former repeal provision was contained in § 41-3-30.

Cross References — Appointment and dismissal of employees of state health department, see § 41-3-15.

Power of the executive officer of the board of health to appoint a county health officer, see § 41-3-37.

Reports of communicable and infectious diseases, see § 41-23-1.

General powers of director under Safe Drinking Water Law of 1976, see § 41-26-19. Tuberculosis control, see §§ 41-33-1 et seq.

§ 41-3-5.1. Executive officer; qualifications; term of office; removal [Repealed effective June 30, 2010].

The State Department of Health shall be headed by an executive officer who shall be appointed by the State Board of Health. The executive officer shall be either a physician who has earned a graduate degree in public health or

health-care administration, or a physician who in the opinion of the board is fitted and equipped to execute the duties incumbent upon him or her by law. The executive officer shall not engage in the private practice of medicine. The term of office of the executive officer shall be six (6) years, and the executive officer may be removed for cause by majority vote of the members of the board. The executive officer shall be subject to such rules and regulations as may be prescribed by the State Board of Health. The executive officer shall be the State Health Officer with such authority and responsibility as is prescribed by law.

SOURCES: Laws, 2007, ch. 514, § 5, eff from and after June 30, 2007.

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References — General powers and duties of executive officer of the state department of health, see § 41-3-15.

Power of the executive officer of the board of health to appoint a county health officer, see § 41-3-37.

Reports of communicable and infectious diseases, see § 41-23-1.

General powers of director under Safe Drinking Water Law of 1976, see § 41-26-19.

Tuberculosis control, see §§ 41-33-1 et seq.

§ 41-3-6. State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective June 30, 2010].

It shall be the duty of the State Board of Health to review the statutes of the State of Mississippi affecting public health and submit at least thirty (30) days prior to each regular session of the Legislature any proposed legislation as may be necessary to enhance the effective and efficient delivery of public health services and to bring existing statutes into compliance with modern technology and terminology. The board shall formulate a plan for consolidating and reorganizing existing state agencies having responsibilities in the field of public health to eliminate any needless duplication in services which may be found to exist. In carrying out the provisions of this section, the State Board of Health shall cooperate with and may utilize the services, facilities and personnel of any department or agency of the state, any private citizen task force and the committees on public health of both houses of the Legislature. The State Board of Health is authorized to apply for and expend funds made available to it by grant from any source in order to perform its responsibilities under this section.

SOURCES: Laws, 1980, ch. 465, § 4; reenacted without change, 1982, ch. 494, § 5; reenacted, Laws, 1990, ch. 568, § 5; reenacted without change, Laws, 1994, ch. 462, § 5; reenacted, Laws, 1995, ch. 363, § 5; reenacted without

change, Laws, 2001, ch. 420, § 5; reenacted without change, Laws, 2007, ch. 514, § 6, eff from and after June 30, 2007.

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment reenacted the section without change.

§ 41-3-7. Repealed.

Repealed by Laws 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1892, § 2279; 1906, §§ 2485, 2497; Hemingway's 1917, §§ 4834, 4846; 1930, §§ 4871, 4883; 1942, §§ 7027, 7039; Laws, 1896, ch. 68; Laws, 1898, p. 93; Laws, 1976, ch. 388; Laws, 1980, ch. 458, § 4]

Editor's Note — Former § 41-3-7 authorized the establishment of a state board of medical licensure executive committee.

§§ 41-3-9 through 41-3-13. Repealed.

Repealed by Laws, 1980, ch. 465, § 6, eff from and after July 1, 1980.

§ 41-3-9. [Laws, 1960, ch. 351, § 1; Laws, 1966, 456, § 1]

§ 41-3-11. [Codes 1892, § 2270; 1906, § 2486; Hemingway's 1917, § 4835; 1930, § 4872; 1942, § 7028]

§ 41-3-13. [Codes, 1892, §§ 2282-2284; 1906, §§ 2506-2508; Hemingway's 1917, §§ 4855-4857; 1930, §§ 4892-4894; 1942, §§ 7048-7050; Laws, 1960, ch. 351, §§ 2, 3]

Editor's Note — Former § 41-3-9 required the Governor to appoint a milk advisory committee to advise with the State Board of Health on regulations for the production, handling and processing of milk and milk products.

Former § 41-3-11 related to meetings of the State Board of Health.

Former § 41-3-13 related to the compensation and expenses of members of the State Board of Health and the milk advisory committee and provided for the method of payment.

§ 41-3-15. General powers, duties and authority of State Board of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective June 30, 2010].

(1)(a) There shall be a State Department of Health.

(b) The State Board of Health shall have the following powers and duties:

(i) To formulate the policy of the State Department of Health regarding public health matters within the jurisdiction of the department;

(ii) To adopt, modify, repeal and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, and as the board may deem necessary;

(iii) To apply for, receive, accept and expend any federal or state funds or contributions, gifts, trusts, devises, bequests, grants, endowments or funds from any other source or transfers of property of any kind;

(iv) To enter into, and to authorize the executive officer to execute, contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if it finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature;

(v) To appoint, upon recommendation of the Executive Officer of the State Department of Health, a Director of Internal Audit who shall be either a Certified Public Accountant or Certified Internal Auditor, and whose employment shall be continued at the discretion of the board, and who shall report directly to the board, or its designee; and

(vi) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(c) The Executive Officer of the State Department of Health shall have the following powers and duties:

(i) To administer the policies of the State Board of Health within the authority granted by the board;

(ii) To supervise and direct all administrative and technical activities of the department, except that the department's internal auditor shall be subject to the sole supervision and direction of the board;

(iii) To organize the administrative units of the department in accordance with the plan adopted by the board and, with board approval, alter the organizational plan and reassign responsibilities as he or she may deem necessary to carry out the policies of the board;

(iv) To coordinate the activities of the various offices of the department;

(v) To employ, subject to regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department. The executive officer shall be the appointing authority for the department, and shall have the power to delegate the authority to appoint or dismiss employees to appropriate subordinates, subject to the rules and regulations of the State Personnel Board;

(vi) To recommend to the board such studies and investigations as he or she may deem appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(vii) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required

by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the board may have;

(viii) To prepare and deliver to the Chairmen of the Public Health and Welfare/Human Services Committees of the Senate and House on or before January 1 of each year, a plan for monitoring infant mortality in Mississippi and a full report of the work of the department on reducing Mississippi's infant mortality and morbidity rates and improving the status of maternal and infant health; and

(ix) To enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if he or she finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature. Each contract or agreement entered into by the executive officer shall be submitted to the board before its next meeting.

(2) The State Board of Health shall have the authority to establish an Office of Rural Health within the department. The duties and responsibilities of this office shall include the following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health-care information.

(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions that affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the prevention of disease or the promotion of health in this state.

(e) To charge and collect reasonable fees for health services, including immunizations, inspections and related activities, and the board shall charge fees for those services; provided, however, if it is determined that a person receiving services is unable to pay the total fee, the board shall collect any amount that the person is able to pay.

(f)(i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled and served for pay; and

(ii) To require that a permit be obtained from the Department of Health before those persons begin operation. If any such person fails to obtain the permit required in this subparagraph (ii), the State Board of Health, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed One Thousand Dollars (\$1,000.00) for each violation. However, the department is not authorized to impose a monetary penalty against any person whose gross annual prepared food sales are less than Five Thousand Dollars (\$5,000.00). Money collected by the board under this subparagraph (ii) shall be deposited to the credit of the State General Fund of the State Treasury.

(g) To promulgate rules and regulations and exercise control over the production and sale of milk pursuant to the provisions of Sections 75-31-41 through 75-31-49.

(h) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(i) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(j) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(k) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.

(5)(a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, those programs may include, but shall not be limited to, programs in the following areas:

- (i) Maternal and child health;
- (ii) Family planning;
- (iii) Pediatric services;
- (iv) Services to crippled and disabled children;
- (v) Control of communicable and noncommunicable disease;
- (vi) Chronic disease;
- (vii) Accidental deaths and injuries;
- (viii) Child care licensure;
- (ix) Radiological health;
- (x) Dental health;
- (xi) Milk sanitation;
- (xii) Occupational safety and health;
- (xiii) Food, vector control and general sanitation;
- (xiv) Protection of drinking water;
- (xv) Sanitation in food handling establishments open to the public;
- (xvi) Registration of births and deaths and other vital events;
- (xvii) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and
- (xviii) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and operated by the department on January 1, 1995, and shall not be authorized to sell, transfer, assign, alienate or otherwise dispose of the license of any of those home health agencies, except upon the specific authorization of the Legislature by an amendment to this section. However, this paragraph (b) shall not prevent the board or the department from closing or terminating the operation of any home health agency owned and operated by the department, or closing or terminating any office, branch office or clinic of any such home health agency, or otherwise discontinuing the providing of home health services through any such home health agency, office, branch office or clinic, if the board first demonstrates that there are other providers of home health services in the area being served by the department's home health agency, office, branch office or clinic that will be able to provide adequate home health services to the residents of the area if the department's home health agency, office, branch office or clinic is closed or otherwise discontinues the providing of home health services. This demonstration by the board that there are other providers of adequate home health services in the area shall be spread at length upon the minutes of the board at a regular or special meeting of the board at least thirty (30) days before a home health agency, office, branch office or clinic is proposed to be closed or otherwise discontinue the providing of home health services.

(c) The State Department of Health may undertake such technical programs and activities as may be required for the support and operation of those programs, including maintaining physical, chemical, bacteriological

and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.

(6)(a) The State Board of Health shall administer the local governments and rural water systems improvements loan program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that those costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating payment to the board; however, those fees may not exceed five percent (5%) of the loan amount.

SOURCES: Codes, 1892, § 2271; 1906, § 2487; Hemingway's 1917, § 4836; 1930, § 4873; 1942, § 7029; Laws, 1968, ch. 441, § 2; Laws, 1971, ch. 378, § 1; reenacted and amended, Laws, 1982, ch. 494, § 6; Laws, 1983, ch. 522, § 1; Laws, 1986, ch. 371, § 1; Laws, 1986, ch. 500, § 22; Laws, 1987, ch. 512, § 5; Laws, 1988, ch. 395, § 4; Laws, 1988, ch. 573; reenacted and amended, Laws, 1990, ch. 568, § 6; Laws, 1992, ch. 495, § 1; reenacted and amended, Laws, 1994, ch. 462, § 6; reenacted and amended, Laws, 1995, ch. 363, § 6; Laws, 1995, ch. 521, § 21; Laws, 1997, ch. 523, § 2; Laws, 1998, ch. 332, § 1; reenacted without change, Laws, 2001, ch. 420, § 6; Laws, 2002, ch. 506, § 8; Laws, 2006, ch. 489, § 1; Laws, 2007, ch. 342, § 1; reenacted and amended, Laws, 2007, ch. 514, § 7, eff from and after June 30, 2007.

Joint Legislative Committee Note — Section 1 of ch. 342, Laws of 2007, effective July 1, 2007 (approved March 14, 2007), amended this section. Section 7 of ch. 514, Laws of 2007, effective June 30, 2007 (approved March 30, 2007), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 514, Laws of 2007, which contains language that specifically provides that it supersedes § 41-3-15 as amended by Laws of 2007, ch. 342.

Editor's Note — For repeal date of this section, see § 41-3-20.

Sections 75-31-41 through 75-31-49, referred to in (4)(g), were repealed by Laws of 1999, ch. 439, § 2, eff from and after July 1, 1999.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The first 2007 amendment (ch. 342) extended the date of the repealer in (4)(i)(ii) from "July 1, 2007" to "July 1, 2009."

The second 2007 amendment (ch. 514) rewrote the section to clarify the general authority of the State Board of Health and the State Board of Health executive officer.

Cross References — Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21.

Duties in connection with solid waste disposal pursuant to joint agreements between counties and municipalities, see §§ 17-17-1 et seq.

Powers and duties of the state board of health with regard to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, see § 21-27-207.

State Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Power of state board of health to require physical examinations of school employees, see § 37-11-17.

County health officer, see § 41-3-37.

County departments of health, see §§ 41-3-43, 41-3-45, 41-3-49 through 41-3-53.

Municipal health boards, see § 41-3-57.

Provision that, for purposes of §§ 41-7-171 et seq., "State Department of Health" shall mean the state agency created under this section, which shall be considered to be the State Health Planning and Development Agency, see § 41-7-173.

Role of State Department of Health in granting of certificate of need required to be obtained by certain health care service providers, see § 41-7-191.

Provision making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Disinfection and sanitation of buildings, see §§ 41-25-1 et seq.

Promulgation of Primary Drinking Water Regulations by state board of health, see § 41-26-5.

Bureau of drug enforcement under Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Regulation of hotels and innkeepers by state board of health, see §§ 41-49-1 et seq.

Animal and poultry byproducts disposal or rendering plants, see §§ 41-51-1 et seq.

Rabies inoculation of dogs and cats, see §§ 41-53-1 et seq.

Establishment and administration of program of emergency medical services, see § 41-59-5.

Powers and duties of the state board of health to administer disbursements from the emergency medical services operating fund, see §§ 41-59-5 and 41-59-61.

Role of State Department of Health in regulating onsite wastewater disposal systems, see §§ 41-67-3 et seq.

Duties of department with respect to Mississippi Hospice Law of 1990, see § 41-85-7.

State Department of Health to provide administrative support for the Child Death Review Panel, see § 41-111-1.

Regulation of institutions for aged and infirm, see §§ 43-11-1 et seq.

Designation of state board of health as agency to administer state-wide radiation protection program, see § 45-14-7.

Powers and duties of the board with regard to transportation of radioactive waste, see §§ 45-14-51 et seq.

Health and safety regulations for rock festivals, see § 45-21-11.

Powers and duties of the board under the Mississippi Boiler and Pressure Vessel Safety Law of 1974, see §§ 45-23-1 et seq.

Authorization for State Board of Health to limit sale of oysters for human consumption, see § 49-15-15.

Membership on board of directors of Pearl River Valley Water Supply District, see § 51-9-107.

Assistance by State Board of Health in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

Sanitary regulations for barber shops, see § 73-5-7.

Review by State Board of Health of rules and regulations relating to sanitation promulgated by state board of cosmetology, see § 73-7-7.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see § 73-24-1 et seq.

Powers and duties of state board with regard to restrictions on license to practice of physicians under disabled physician law, see §§ 73-25-51 et seq.

Duties of the board of health with respect to anhydrous ammonia storage facilities, see § 75-57-31.

Duties of state board of health under Mississippi Youth Camp Safety and Health Law, see §§ 75-74-1 et seq.

Regulation of nonprofit dental service associations, see §§ 83-43-1 et seq.

Federal Aspects — Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

2.-5. [Reserved for future use].

II. Under Former § 41-3-21.

6. Constitutionality.

I. Under Current Law.

1. In general.

Mississippi Board of Health Regulation, excluding milk from another state unless such other state accepted Mississippi milk on a reciprocal basis, unduly burdened interstate commerce and could not be justified either as a permissible exercise of state power in maintaining health standards, particularly since such milk was excluded regardless of whether it met health standards, or as a free trade provision promoting trade between the states. *Great Atl. & Pac. Tea Co. v. Cottrell*, 424 U.S. 366, 96 S. Ct. 923, 47 L. Ed. 2d 55 (1976).

Contents of the records of the director of the state hygienic laboratory as to the result of a blood test were admissible in a suit for damages for negligent burns of X-ray machine where it was not shown that proffered evidence pertained to a blood specimen of plaintiff. *Unger v.*

Grimsley, 138 Miss. 591, 103 So. 341 (1925).

The law creating the state board of health held to be constitutional under the police power of the state. *Hawkins v. Hoyer*, 108 Miss. 282, 66 So. 741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

An ordinance of the board of health requiring that milk cows used in the dairy business be examined is valid; it does not violate either the federal or state constitution. *Hawkins v. Hoyer*, 108 Miss. 282, 66 So. 741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

2.-5. [Reserved for future use].

II. Under Former § 41-3-21.

6. Constitutionality.

A case holding that this section [Code 1942, § 7032] as it appeared as *Hemingway Code 1927*, § 5517 with reference to removal of county health officer without notice or cause was unconstitutional. *Mississippi State Bd. of Health v. Matthews*, 113 Miss. 510, 74 So. 417 (1917).

The county health officer is a public officer and cannot be removed by the state board of health without cause, notice or hearing. *Ware v. State*, 111 Miss. 599, 71 So. 868 (1916), error overruled, 72 So. 237 (Miss. 1916).

ATTORNEY GENERAL OPINIONS

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for

health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. *Thompson*, April 18, 1995, A.G. Op. #95-0240.

RESEARCH REFERENCES

ALR. Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety. 75 A.L.R.4th 13.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Am Jur. 39 Am. Jur. 2d, Health §§ 1 et seq.

CJS. 39A C.J.S., Health and Environment §§ 20 et seq.

§ 41-3-16. Local governments and rural water systems improvements revolving loan and grant program [Repealed effective June 30, 2010].

(1)(a) There is established a local governments and rural water systems improvements revolving loan and grant program to be administered by the State Department of Health, referred to in this section as “department,” for the purpose of assisting counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, in making improvements to their water systems, including construction of new water systems or expansion or repair of existing water systems. Loan and grant proceeds may be used by the recipient for planning, professional services, acquisition of interests in land, acquisition of personal property, construction, construction-related services, maintenance, and any other reasonable use which the board, in its discretion, may allow. For purposes of this section, “water systems” has the same meaning as the term “public water system” under Section 41-26-3.

(b)(i) There is created a board to be known as the “Local Governments and Rural Water Systems Improvements Board,” referred to in this section as “board,” to be composed of the following nine (9) members: the State Health Officer, or his designee, who shall serve as chairman of the board; the Executive Director of the Mississippi Development Authority, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; the Executive Director of the Department of Finance and Administration, or his designee; the Executive Director of the Mississippi Association of Supervisors, or his designee; the Executive Director of the Mississippi Municipal League, or his designee; the Executive Director of the American Council of Engineering Companies of Mississippi, or his designee; the State Director of the United States Department of Agriculture, Rural Development, or his designee; and a manager of a rural water system.

The Governor shall appoint a manager of a rural water system from a list of candidates provided by the Executive Director of the Mississippi Rural Water Association. The Executive Director of the Mississippi Rural Water Association shall provide the Governor a list of candidates which shall contain a minimum of three (3) candidates for each appointment.

(ii) Nonappointed members of the board may designate another representative of their agency or association to serve as an alternate.

(iii) The gubernatorial appointee shall serve a term concurrent with the term of the Governor and until a successor is appointed and qualified. No member, officer or employee of the Board of Directors of the Mississippi Rural Water Association shall be eligible for appointment.

(c) The department, if requested by the board, shall furnish the board with facilities and staff as needed to administer this section. The department may contract, upon approval by the board, for those facilities and staff needed to administer this section, including routine management, as it deems necessary. The board may advertise for or solicit proposals from public or private sources, or both, for administration of this section or any services required for administration of this section or any portion thereof. It is the intent of the Legislature that the board endeavor to ensure that the costs of administration of this section are as low as possible in order to provide the water consumers of Mississippi safe drinking water at affordable prices.

(d) Members of the board may not receive any salary, compensation or per diem for the performance of their duties under this section.

(2)(a) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Improvements Revolving Loan Fund," referred to in this section as "revolving fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The revolving fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. The revolving fund shall be credited with all repayments of principal and interest derived from loans made from the revolving fund. The monies in the revolving fund may be expended only in amounts appropriated by the Legislature, and the different amounts specifically provided for the loan program and the grant program shall be so designated. Monies in the fund may only be expended for the grant program from the amount designated for such program. The revolving fund shall be maintained in perpetuity for the purposes established in this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the revolving fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the revolving fund shall be deposited to the credit of the fund. Monies in the revolving fund may not be used or expended for any purpose except as authorized under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any monies in the fund may be used to match any federal funds that are available for the same or related purposes for which funds are used and expended under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any federal funds shall be used and expended only in accordance with federal laws, rules and regulations governing the expenditure of those funds. No person shall use any monies from the revolving fund for the acquisition of real property or any interest in real property unless that property is integral to the project funded under this section and the purchase is made from a willing seller. No county, incorporated municipality or district shall acquire any real property

or any interest in any real property for a project funded through the revolving fund by condemnation. The board's application of Sections 43-37-1 through 43-37-13 shall be no more stringent or extensive in scope, coverage and effect than federal property acquisition laws and regulations.

(b) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Emergency Loan Fund," hereinafter referred to as "emergency fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The emergency fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. The emergency fund shall be credited with all repayments of principal and interest derived from loans made from the emergency fund. The monies in the emergency fund may be expended only in amounts appropriated by the Legislature. The emergency fund shall be maintained in perpetuity for the purposes established in this section and Section 6 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the emergency fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned on amounts in the emergency fund shall be deposited to the credit of the fund. Monies in the emergency fund may not be used or expended for any purpose except as authorized under this section and Section 6 of Chapter 521, Laws of 1995.

(c) The board created in subsection (1) shall establish loan and grant programs by which loans and grants may be made available to counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, to assist those counties, incorporated municipalities, districts or water organizations in making water systems improvements, including the construction of new water systems or expansion or repair of existing water systems. Any entity eligible under this section may receive either a loan or a grant, or both. No grant awarded under the program established in this section may be made using funds from the loan program. Grants may be awarded only when the Legislature specifically appropriates funds for that particular purpose. The interest rate on those loans may vary from time to time and from loan to loan, and will be at or below market interest rates as determined by the board. The board shall act as quickly as is practicable and prudent in deciding on any loan request that it receives. Loans from the revolving fund or emergency fund may be made to counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, as set forth in a loan agreement in amounts not to exceed one hundred percent (100%) of eligible project costs as established by the board. The board may require county, municipal, district or other water organization participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund or the emergency fund. The board may establish a maximum amount for any loan from the revolving fund or emergency fund in order to provide for broad and equitable participation in the programs.

(d) A county that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required to meet the repayment schedule contained in the loan agreement. An incorporated municipality that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75, as may be required to meet the repayment schedule contained in the loan agreement. All recipients of such loans shall establish a dedicated source of revenue for repayment of the loan. Before any county or incorporated municipality shall receive any loan, it shall have executed with the State Tax Commission and the board a loan agreement evidencing that loan. The loan agreement shall not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). Except as otherwise provided in subsection (4) of this section, the loan agreement shall provide for the repayment of all funds received from the revolving fund within not more than fifteen (15) years or a term as otherwise allowed by the federal Safe Drinking Water Act, and all funds received from the emergency fund within not more than five (5) years from the date of project completion, and any repayment shall commence not later than one (1) year after project completion. The State Tax Commission shall withhold semiannually from counties and monthly from incorporated municipalities from the amount to be remitted to the county or municipality, a sum equal to the next repayment as provided in the loan agreement.

(e) Any county, incorporated municipality, district or other water organization desiring to construct a project approved by the board which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of paragraph (d) of this subsection, shall repay that loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the board according to Section 7-7-15, to be credited to either the revolving fund or the emergency fund, whichever is appropriate, in lieu of pledging homestead exemption annual tax loss reimbursement or sales tax revenue distribution.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as provided in paragraph (d) of this subsection.

(f) Any district created pursuant to Sections 19-5-151 through 19-5-207 that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the revenues received by that district pursuant to Sections 19-5-151 through 19-5-207, as may be required to meet the repayment schedule contained in the loan agreement.

(g) The State Auditor, upon request of the board, shall audit the receipts and expenditures of a county, an incorporated municipality, district or other

water organization whose loan repayments appear to be in arrears, and if the Auditor finds that the county, incorporated municipality, district or other water organization is in arrears in those repayments, the Auditor shall immediately notify the chairman of the board who may take any action as may be necessary to enforce the terms of the loan agreement, including liquidation and enforcement of the security given for repayment of the loan, and the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption annual tax loss reimbursements under Section 27-33-77 and all sums allocated to the county or the incorporated municipality under Section 27-65-75 until such time as the county or the incorporated municipality is again current in its loan repayments as certified by the board.

(h) All monies deposited in the revolving fund or the emergency fund, including loan repayments and interest earned on those repayments, shall be used only for providing loans or other financial assistance to water systems as the board deems appropriate. In addition, any amounts in the revolving fund or the emergency fund may be used to defray the reasonable costs of administering the revolving fund or the emergency fund and conducting activities under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, subject to any limitations established in the federal Safe Drinking Water Act, as amended and subject to annual appropriation by the Legislature. The department is authorized, upon approval by the board, to use amounts available to it from the revolving fund or the emergency fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program.

(3) In administering this section and Sections 6 through 20 of Chapter 521, Laws of 1995, the board created in subsection (1) of this section shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(b) To promulgate rules and regulations, to make variances and exceptions thereto, and to establish procedures in accordance with this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for the implementation of the local governments and rural water systems improvements revolving loan program;

(c) To require, at the board's discretion, any loan or grant recipient to impose a per connection fee or surcharge or amended water rate schedule or tariff on each customer or any class of customers, benefiting from an improvement financed by a loan or grant made under this section, for repayment of any loan funds provided under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. The board may require any loan or grant recipient to undergo a water system viability analysis and may require a loan or grant recipient to implement any result of the viability analysis. If the loan recipient fails to implement any result of a viability analysis as

required by the board, the board may impose a monetary penalty or increase the interest rate on the loan, or both. If the grant recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty on the grant;

(d) To review and certify all projects for which funds are authorized to be made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(e) To requisition monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund and distribute those monies on a project-by-project basis in accordance with this section;

(f) To ensure that the funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, to a county, an incorporated municipality, a district or a water organization that has been granted tax exempt status under either federal or state law provide for a distribution of projects and funds among the entities under a priority system established by the board;

(g) To maintain in accordance with generally accepted government accounting standards an accurate record of all monies in the revolving fund and the emergency fund made available to counties, incorporated municipalities, districts or other water organizations under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, and the costs for each project;

(h) To establish policies, procedures and requirements concerning viability and financial capability to repay loans that may be used in approving loans available under this section, including a requirement that all loan recipients have a rate structure which will be sufficient to cover the costs of operation, maintenance, major equipment replacement and repayment of any loans made under this section; and

(i) To file annually with the Legislature a report detailing how monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund were spent during the preceding fiscal year in each county, incorporated municipality, district or other water organization, the number of projects approved and constructed, and the cost of each project.

For efficient and effective administration of the loan program, revolving fund and emergency fund, the board may authorize the department or the State Health Officer to carry out any or all of the powers and duties enumerated above.

(4) The board may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to incorporated municipalities, districts or other water organizations located in such counties; however, the

interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Laws, 1995, ch. 521, §§ 1-3; Laws, 1996, ch. 542, § 1; Laws, 1998, ch. 375, § 1; Laws, 2000, ch. 595, § 1; reenacted without change, Laws, 2001, ch. 420, § 7; Laws, 2002, ch. 399, § 1; Laws, 2006, ch. 545, § 1; Laws, 2007, ch. 514, § 8; Laws, 2007, ch. 583, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first sentence of subsection (3)(c). The words “this act” were changed to “this section”. The Joint Committee ratified the correction at its June 3, 2003, meeting.

Section 8 of ch. 514, Laws of 2007, effective June 30, 2007 (approved March 30, 2007), amended this section. Section 1 of ch. 583, Laws of 2007, effective July 1, 2007 (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 583, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor’s Note — For repeal date of this section, see § 41-3-20.

Effective July 1, 2010, Section 27-3-4 provides that the terms “Mississippi State Tax Commission,” “State Tax Commission,” “Tax Commission” and “commission” appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.”

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Section 7-7-2 provides that the words “State Auditor of Public Accounts,” “State Auditor” and “Auditor” appearing in the laws of this state in connection with the performance of the Auditor’s functions shall mean the State Fiscal Officer whenever they appear. Section 27-104-6 provides that wherever the term “State Fiscal Officer” appears in any law it shall mean “Executive Director of the Department of Finance and Administration.”

Amendment Notes — The first 2007 amendment (ch. 514) reenacted the section without change.

The second 2007 amendment (ch. 583) substituted “American Council of Engineering Companies of Mississippi” for “Consulting Engineers Council” near the end of the first paragraph of (1)(b)(i); and substituted the present last sentence of (2)(c) for the former last sentence, which read: “The maximum amount for any loan from the emergency fund shall be Five Hundred Thousand Dollars (\$500,000.00), and the maximum amount for any loan from the revolving fund shall be One Million Five Hundred Thousand Dollars (\$1,500,000.00).”

Cross References — Revenue from certain taxes may be used as security for loan, see § 27-65-75.

Executive officer of the State Health Department to be State Health Officer, see § 41-3-5.1.

General powers and duties of executive officer, see § 41-3-15.

Federal Aspects — Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waters § 140.

§ 41-3-17. Power to make and publish rules and regulations [Repealed effective June 30, 2010].

The State Board of Health is authorized to make and publish all reasonable rules and regulations necessary to enable it to discharge its duties and powers and to carry out the purposes and objectives of its creation. It is further authorized to make reasonable sanitary rules and regulations, to be enforced in the several counties by the county health officer under the supervision and control of the State Board of Health. The State Board of Health shall not make or enforce any rule or regulation that prohibits consumers from providing their own containers for the purpose of purchasing or accepting water from any vending machine or device which filters or treats water that has already been tested and determined to meet or exceed the minimum health protection standards prescribed for drinking water under the Mississippi Safe Drinking Water Law, if that vending machine or device meets or exceeds United States Environmental Protection Agency or national automatic merchandising standards.

SOURCES: Codes, 1892, § 2273; 1906, § 2489; Hemingway's 1917, § 4838; 1930, § 4875; 1942, § 7031; Laws, 1968, ch. 441, § 3; reenacted without change, Laws, 1982, ch. 494, § 7; reenacted and amended, Laws, 1990, ch. 568, § 7; reenacted without change, Laws, 1994, ch. 462, § 7; reenacted, Laws, 1995, ch. 363, § 7; Laws, 1996, ch. 516, § 22; reenacted without change, Laws, 2001, ch. 420, § 8; reenacted without change, Laws, 2007, ch. 514, § 9, eff from and after June 30, 2007.

Editor's Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act." Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment reenacted the section without change.

Cross References — Powers and duties of the state board of health with regard to the Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, see § 21-27-207.

Penalty for violation of rules, see § 41-3-59.

Mississippi Safe Drinking Water Law, see §§ 41-26-1 et seq.

Regulation of drugs, see §§ 41-29-101 et seq.

Powers and duties of the State Board of Health with respect to the Mississippi Occupational Therapy Practice Act, see §§ 73-24-1 et seq.

JUDICIAL DECISIONS

1. In general.

A regulation requiring every licensed physician practicing in the state to file a morbidity report on the first day of each month as provided by the rules of the state board of health is not unreasonable.

Smythe v. State, 124 Miss. 454, 86 So. 870 (1921).

Where the evidence in the trial of a physician for knowingly violating a rule of the state board of health does not show that the defendant had knowledge of such

regulation, or that publication of such regulation had been made, the defendant is entitled to peremptory instructions. Smythe v. State, 124 Miss. 454, 86 So. 870 (1921).

§ 41-3-18. Assessment of fees [Repealed effective June 30, 2010].

(1) The board shall assess fees in the following amounts and for the following purposes:

(a) Food establishment annual permit fee, based on the assessment factors of the establishment as follows:

| | |
|-----------------------------|----------|
| Assessment Category 1 | \$ 30.00 |
| Assessment Category 2 | 100.00 |
| Assessment Category 3 | 150.00 |
| Assessment Category 4 | 200.00 |

(b) Private water supply approval fee\$ 10.00

The board may develop such reasonable standards, rules and regulations to clearly define each assessment category. Assessment categories shall be based upon the factors to the public health implications of the category and type of food preparation being utilized by the food establishment, utilizing the model Food Code of 1995, or as may be amended by the federal Food and Drug Administration.

(2) The fee authorized under subsection (1)(a) of this section shall not be assessed for:

(a) Food establishments operated by public schools, public junior and community colleges, or state agencies or institutions, including, without limitation, the state institutions of higher learning and the State Penitentiary; and

(b) Persons who make infrequent casual sales of honey and who pack or sell less than five hundred (500) gallons of honey per year, and those persons shall not be inspected by the State Department of Health unless requested by the producer.

(3) The fee authorized under subsection (1) (b) of this section shall not be assessed for private water supplies used by foster homes licensed by the Department of Human Services.

SOURCES: Laws, 1986, ch. 371, § 2; Laws, 1988, ch. 395, § 5; Laws, 1989, ch. 313, § 1; Laws, 1989, ch. 547, § 1; reenacted, Laws, 1990, ch. 568, § 8; Laws, 1991, ch. 606, § 1; reenacted without change, Laws, 1994, ch. 462, § 8; reenacted, Laws, 1995, ch. 363, § 8; Laws, 1997, ch. 427, § 1; reenacted without change, Laws, 2001, ch. 420, § 9; reenacted and amended, Laws, 2007, ch. 514, § 10; Laws, 2008, ch. 315, § 1; Laws, 2009, ch. 331, § 1, eff from and after July 1, 2009.

Editor's Note — For repeal date of this section, see § 41-3-20.
Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment in (a), substituted the permit fee of “\$30.00” for “\$15.00” in Category 1, “100.00” for “30.00” in Category 2, “150.00” for “70.00” in Category 3, “200.00” for “150.00” in Category 4 and deleted “Assessment Category 5...\$150.00.”

The 2008 amendment added the last paragraph.

The 2009 amendment rewrote the section to exempt certain persons from inspection by the State Department of Health unless requested by the producer.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 109, **CJS.** 39A C.J.S., Health & Environment §§ 95-100.

§ 41-3-19. Report to the Governor [Repealed effective June 30, 2010].

It is the duty of the State Board of Health to make a report, in writing, to the Governor, on or before the first day of December next preceding each session, not an extraordinary session of the Legislature, upon the sanitary condition, prospect, and needs of the state, setting forth the action of said board, of its officers and agents, the names thereof, and all its expenditures since the last preceding report, and such other matters as it may deem proper for the promotion of health or the prevention of disease. The report shall be laid before the Legislature by the Governor at its ensuing term.

SOURCES: Codes, 1892, § 2272; 1906, § 2488; Hemingway’s 1917, § 4837; 1930, § 4874; 1942, § 7030; reenacted and amended, Laws, 1982, ch. 494, § 8; reenacted, Laws, 1990, ch. 568, § 9; reenacted without change, Laws, 1994, ch. 462, § 9; reenacted, Laws, 1995, ch. 363, § 9; reenacted without change, Laws, 2001, ch. 420, § 10; reenacted without change, Laws, 2007, ch. 514, § 11, eff from and after June 30, 2007.

Editor’s Note — For repeal date of this section, see § 41-3-20.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment reenacted the section without change.

Cross References — Reports of local health officers to state board of health, see § 41-3-51.

§ 41-3-20. Repeal of §§ 41-3-1 through 41-3-19.

(1) Section 41-3-1, which creates the State Board of Health, shall stand repealed on March 30, 2007.

(2) Section 41-3-5, which creates the position of the Executive Officer of the State Department of Health, shall stand repealed on June 30, 2007.

(3) Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the reconstituted State Board of Health, establish the position of Executive Officer of the State Department of Health and establish the State Department of Health and prescribe its powers and duties, shall stand repealed on June 30, 2010.

SOURCES: Laws, 1994, ch. 462, § 11; Laws, 1995, ch. 363, § 10; Laws, 2001, ch. 420, § 11; Laws, 2007, ch. 514, § 1, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment rewrote the section to provide that § 41-3-1 is repealed on March 30, 2007, § 41-3-5 is repealed on June 30, 2007, and §§ 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6 and 41-3-15 through 41-3-19 are repealed on June 30, 2010.

§ 41-3-21. Mississippi Public Health Laboratory created; powers and duties.

(1) There is hereby established the Mississippi Public Health Laboratory in the Mississippi State Department of Health.

(2) The Mississippi Public Health Laboratory shall have the following powers and duties:

(a) To perform such laboratory tests and procedures as shall be determined beneficial to the health of the people of Mississippi;

(b) To apply for and maintain any and all necessary federal or other certifications and/or licenses for the performance of its duties, unless such authority shall be otherwise assigned by official action of the State Board of Health;

(c) The Mississippi Public Health Laboratory shall be under the management of a director, who shall be appointed by the State Health Officer. The responsibility for the laboratory shall be vested in the director. The director shall be the administrative officer of the Mississippi Public Health Laboratory and shall perform the duties as may be assigned to him or her by the State Board of Health. The director shall receive compensation as may be fixed by the State Board of Health, subject to the approval of the State Personnel Board. The State Health Officer may employ such other persons as may be necessary to carry out the provisions of this section. The compensation and the terms and conditions of their employment shall be determined by the State Board of Health in accordance with applicable state law and rules and regulations of the State Personnel Board.

SOURCES: Laws, 2009, ch. 301, § 1, effective from and after passage (approved January 28, 2009).

Editor's Note — A former § 41-3-21 [Codes, 1892, § 2274; 1906, § 2490; Hemingway's 1917, § 4839; 1930, § 4876; 1942, § 7032], which authorized the state board of health to fill vacancies, was repealed by Laws of 1982, ch. 494, § 16, effective from and after July 1, 1982.

§ 41-3-23. Mississippi Public Health Laboratory Fund established; use of other funds to support Mississippi Public Health Laboratory authorized.

(1) There is established in the State Treasury a special fund to be known as the Mississippi Public Health Laboratory Fund, which shall be comprised of any funds that are authorized or required to be deposited in the special fund including, but not limited to, all laboratory fees collected and other income generated by the laboratory. Monies in the fund shall be used for the operations of the Mississippi Public Health Laboratory or the administration thereof. All income from the investment of the funds in the special fund shall be credited to the account of the special fund. Any funds in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The State Department of Health is authorized to utilize any other funds not otherwise specifically appropriated by the Legislature for the support of the Mississippi Public Health Laboratory as necessary.

SOURCES: Laws, 2009, ch. 301, § 2, eff from and after passage (approved Jan. 28, 2009.)

Editor's Note — A former §41-3-23 [Codes, 1942, §§ 7031, 7066-01; Laws, 1968, ch. 441, §§ 1, 3], which designated the State Board of Health as the tumor registry agency of the state, was repealed by Laws of 1982, ch. 494, § 16, effective from and after July 1, 1982.

§§ 41-3-25 through 41-3-29. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

§ 41-3-25. [Codes, 1942, § 1697; Laws, 1968, ch. 441, § 4]

§ 41-3-27. [Codes, 1942, § 7066-02; Laws, 1968, ch. 441, § 7]

§ 41-3-29. Codes, 1942, § 7066-03; Laws, 1968, ch. 441, § 8]

Editor's Note — Former § 41-3-25 specified the information to be furnished to the tumor registry agency.

Former § 41-3-27 specified penalties for violations.

Former § 41-3-29 authorized the tumor registry agency to accept federal grants and assistance.

§ 41-3-30. Repealed.

Repealed by Laws, 1994, ch. 462, § 10, eff from and after July 1, 1994.

[Laws, 1979, ch. 301, § 47; Laws, 1982, ch. 494, § 9; Laws, 1990, ch. 568, § 10]

Editor's Note — Former § 41-3-30 was entitled: Repeal of §§ 41-3-1 through 41-3-19. See Section 41-3-20 for repeal provisions for §§ 41-3-1 through 41-3-19.

§§ 41-3-31 through 41-3-35. Repealed.

Repealed by Laws, 1976, ch. 469, § 21, eff from and after passage (approved May 25, 1976).

§§ 41-3-31 through 41-3-35 [Laws, 1964, ch. 435, §§ 1, 2]

Editor's Note — Former § 41-3-31 designated the State Board of Health as the state's radiation control agency and provided for the promulgation of rules and regulations.

Former § 41-3-33 provided for a radiation advisory committee, with authority to approve nuclear control rules and regulations and advise the state board of health concerning nuclear matters.

Former § 41-3-35 provided for the enforcement of §§ 41-3-31 through 41-3-35 and nuclear control rules and regulations, declared a misdemeanor and provided a penalty.

§ 41-3-37. Appointment of county health officer.

A competent physician shall be appointed county health officer for each county by the State Board of Health or its executive officer. Said board shall cause the appointment to be certified by its secretary to the board of supervisors of the county for which the appointment was made.

SOURCES: Codes, 1892, § 2275; 1906, § 2491; Hemingway's 1917, § 4840; 1930, § 4877; 1942, § 7033; Laws, 1982, ch. 494, § 10, eff from and after July 1, 1982.

Cross References — County health department, see §§ 41-3-43, 41-3-45, 41-3-49 to 41-3-53.

Municipal regulation of health, see § 41-3-57.

Inspection of establishments employing child labor, see § 71-1-25.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

The powers vested in the state board of health under this section [Code 1942, § 7033] held to be constitutional. *Hawkins v. Hoyer*, 108 Miss. 282, 66 So. 741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

2. Construction and application.

The power of the board of supervisors to fix the salary of a county health officer cannot be reviewed by the circuit court unless the board fix the salary so low as to oust the officer or in effect abolish the

officer. *Board of Supvrs. v. Powell*, 122 Miss. 665, 84 So. 905 (1920).

Compensation of health officers appointed by municipalities discussed. *Town of Pass Christian v. Washington*, 81 Miss. 470, 34 So. 225 (1903).

A county health officer, appointed by the board of supervisors under this section [Code 1942, § 7033], is only entitled to the salary fixed in advance by the board of supervisors as compensation for official services rendered by him, and he cannot maintain an action of assumpsit upon a quantum meruit for such services, however great. *Yandell v. Madison County*, 81 Miss. 288, 32 So. 918 (1902).

The board of supervisors cannot fix or abolish the office. Board of Supvrs. v. reduce after being fixed the salary of the Westbrook, 64 Miss. 312, 1 So. 352 (1887). county health officer so as to virtually

§ 41-3-39. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1892, § 2285; 1906, § 2509; Hemingway's 1917, § 4858; 1930, § 4895; 1942, § 7051]

Editor's Note — Former § 41-3-39 authorized the payment of compensation to the county health officer.

§ 41-3-41. Duties of county health officer.

It shall be the duty of the county health officer to administer programs and enforce the public health provisions of the Mississippi Code and the rules and regulations of the state board of health applicable in his county. He shall report his actions and all informations and results of his investigations to the board of supervisors and state board of health, and he shall do such other things as the state board of health may lawfully require of him.

SOURCES: Codes, 1892, § 2276; 1906, § 2494; Hemingway's 1917, § 4843; 1930, § 4880; 1942, § 7036; Laws, 1894, ch. 39; Laws, 1982, ch. 494, § 11, eff from and after July 1, 1982.

Cross References — Communicable and infectious diseases, see §§ 41-23-1 et seq. Disinfection and sanitation of buildings and premises, see §§ 41-25-1 et seq. Regulation of hotels and innkeepers, see §§ 41-49-1 et seq.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 7036] and other sections, the legislature conferred upon the state board of health the power to make reasonable rules and regulations for the prevention of diseases and the protection of the health of the people. Hawkins v. Hoyer, 108 Miss. 282, 66 So.

741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

The orders of the state board of health must stand the test of reasonableness and whether an order be reasonable or unreasonable is a judicial question. Wilson v. Alabama G.S.R. Co., 77 Miss. 714, 28 So. 567, 78 Am. St. R. 543 (1900).

RESEARCH REFERENCES

ALR. Propriety of state or local government health officer's warrantless search—post-Camara cases. 53 A.L.R.4th 1168.

§ 41-3-43. County department of health; director.

(1) Each county in the state is authorized in its discretion to create a county health department and to appropriate funds for its support. A director for the same shall be appointed in accordance with Section 41-3-37 and

certified to the board of supervisors of the county. Said director shall be a licensed physician, well trained in health work and shall be required to give his entire time to the work.

(2)(a) The State Board of Health may create public health districts of two (2) or more counties for the purpose of administering health programs and supervising public health workers in the district. The state board of health or its executive officer shall appoint for each such district created a district director, who shall be a licensed physician, well trained in public health work, who shall give his entire time to the work. The district director may serve as county health officer of any or all counties in the district.

(b) The boards of supervisors of the counties comprising a public health district are hereby authorized, in their discretion, to appropriate funds for the support of the public health district from the general funds of the counties; and pursuant to Section 19-9-97, to levy additional taxes for the support of county or district health departments.

(3) When any county or counties create a health department hereunder, then all other local or municipal or county public health agencies and departments are thereby automatically abolished, and said county and district health departments shall have full control over all health matters in said county and counties, including all municipalities therein, subject to the supervision, direction, and jurisdiction of the state board of health. The proper authorities of any municipality in the State of Mississippi are hereby authorized in their discretion to make an appropriation for the support of such county or district health department from the general funds of such municipality.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884g; 1930, § 4926; 1942, § 7082; Laws, 1918, ch. 194; Laws, 1926, ch. 309; Laws, 1982, ch. 494, § 12, eff from and after July 1, 1982.

Cross References — Municipal quarantine regulations, see §§ 21-19-3, 21-19-17. County health officer, see § 41-3-37.

Municipal regulations of health, see § 41-3-57.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7082], abolishing all other local, municipal, and county health agencies on creation by county of health department hereunder, controls general statutes empowering municipalities to enact ordinances and prescribe health regulations. *City of Jackson v. Ferguson*, 167 Miss. 819, 150 So. 531 (1933).

Where county had created health department under this section [Code 1942, § 7082], providing for automatic abolition of all other local, municipal, and county health agencies, municipal ordinance providing for inspection of all foods offered for sale and payment of fees fixed in ordinance was void. *City of Jackson v. Ferguson*, 167 Miss. 819, 150 So. 531 (1933).

RESEARCH REFERENCES

ALR. Propriety of state or local government health officer's warrantless search — post-Camara cases. 53 A.L.R.4th 1168.

§ 41-3-45. Term of office of director; removal.

The State Board of Health shall remove any director at any time for such conduct as it may deem improper, or for neglect of duty, or for incompetency, or for any offense which in its judgment, is detrimental to the public welfare. It may summarily suspend any director until any complaint made of such director may be fully investigated by the State Board of Health.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884i; 1930, § 4928; 1942, § 7084; Laws, 1920, ch. 208; Laws, 1982, ch. 494, § 13, eff from and after July 1, 1982.

Cross References — County health officer, see § 41-3-37.

§ 41-3-47. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, Hemingway's 1921 Supp. § 4884l; 1930, § 4931; 1942, § 7087; Laws, 1920, ch. 208]

Editor's Note — Former § 41-3-47 provided that the director of a county board of health did not have to be a resident, and directed that the director be furnished living quarters.

§ 41-3-49. Powers and duties of director.

The director appointed pursuant to Section 41-3-43 shall be given authority to enforce all health laws of the district or county under the supervision and direction of the State Board of Health, or its executive committee, and to make such investigation of health problems and recommend and institute such measures as may be necessary. He shall be under the supervision, direction and jurisdiction of the State Board of Health, or its executive committee, and he shall make report to said Board of Health of all matters concerning the sanitary conditions of his district or county in the manner prescribed by the state board of health, or its executive committee.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884h; 1930, § 4927; 1942, § 7083; Laws, 1920, ch. 208.

Cross References — County health officer, see § 41-3-37.

Director of State Board of Health being member of marine conservation commission, see § 49-15-11.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 1 et seq.

CJS. 39A C.J.S., Health and Environment §§ 18 et seq.

§ 41-3-51. Records and reports of director.

The director appointed pursuant to Section 41-3-43 of any county or district shall keep an accurate record of all activities of the department of health of the county or district which he serves for use of the public and for information to the board of health, and such reports as required by the board of health shall be made to it. All officers and employees of the county or district department of health shall be subject to the jurisdiction and regulations of the state board of health or its executive committee.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884k; 1930, § 4930; 1942, § 7086; Laws, 1920, ch. 208.

Cross References — Reports by state board of health, see § 41-3-19.

§ 41-3-53. Maintenance of county department of health.

The board of supervisors shall be authorized to make such appropriations for the department of health as may be necessary to pay the salary of the director, and the salaries of all necessary sanitary inspectors, nurses, and such other employees as may be employed for carrying on the work. The board shall be authorized to pay all necessary traveling expenses of said employees in the performance of their duties. The board shall be authorized to pay for all necessary medicine, materials and supplies. The board shall provide an office for its health department, and furnish said office, and its employees, with all necessary record books, stationery, stamps, tables, chairs, furniture and all other necessary articles. The board is also authorized to do any and all things necessary and proper to maintain and support a health department. Where two (2) or more counties shall unite in having a department of health, the amount contributed by each for maintaining and supporting the work shall be agreed upon by the respective counties, subject to the approval of the state board of health, or its executive committee, and all salaries to be paid shall be recommended by the state board of health, or its executive committee to the board of supervisors of the county or counties for which the officers or employees are to act. All employees shall be recommended by the state board of health, or its executive committee, and all salaries shall be recommended in the same way.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884j; 1930, § 4929; 1942, § 7085; Laws, 1920, ch. 208; Laws, 1940, ch. 264.

§ 41-3-55. Repealed.

Repealed by Laws, 1982, ch. 494, § 16, eff from and after July 1, 1982.

[Codes, 1906, § 1645; Hemingway's 1917, § 4823; 1930, § 4865; 1942, § 7021]

Editor's Note — Former § 41-3-55 directed the appointment of a county board of health in each county of the state.

§ 41-3-57. Municipal regulation of health.

Any municipality may pass public health laws or ordinances and enforce the collection and registration of birth, health, and mortuary statistics. However, such power shall be subject to and not inconsistent with the rules and regulations of the state board of health touching the health interests of the county in which such municipality is situated. In the absence of an explicit agreement to the contrary between the state board of health and such municipality, enforcement of municipal laws shall be the responsibility of the municipality.

SOURCES: Codes, 1892, § 2281; 1906, § 2505; Hemingway's 1917, § 4854; 1930, § 4891; 1942, § 7047; Laws, 1982, ch. 494, § 14, eff from and after July 1, 1982.

Cross References — Municipal quarantine regulations, see §§ 21-19-3, 21-19-17.
County health officer, see § 41-3-37.

County health departments, see §§ 41-3-43, 41-3-45, 41-3-49 through 41-3-53.

JUDICIAL DECISIONS

1. In general.

Ordinance forbidding barber shops to open before 7:30 a.m. or remain open after 6:30 p.m. could not be held valid on

ground it was designed to fix reasonable time for inspecting barber shops. *Knight v. Johns*, 161 Miss. 519, 137 So. 509 (1931).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health § 5.

CJS. 39A C.J.S., Health and Environment §§ 4, 6, 10.

§ 41-3-59. Violation of health rules.

Except as may otherwise be provided, any person who shall knowingly violate any of the provisions of this chapter, or any rule or regulation of the state board of health, or any order or regulation of the board of supervisors of any county or any municipal ordinance herein authorized to be made, shall be guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both.

SOURCES: Codes, 1892, § 2287; 1906, § 2511; Hemingway's 1917, § 4860; 1930, § 4897; 1942, § 7053; Laws, 1983, ch. 522, § 2, eff from and after July 1, 1983.

Cross References — Rules of state board of health, see § 41-3-17.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 7053] and other sections bestowed upon the state board of health the authority to make reasonable rules and regulations for the

prevention of diseases and the protection of the health of the people. *Hawkins v. Hoye*, 108 Miss. 282, 66 So. 741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

MEDICAL SERVICES FOR UNINSURED

SEC.

41-3-101. Provision of free medical services to those uninsured and unable to pay; funding.

§ 41-3-101. Provision of free medical services to those uninsured and unable to pay; funding.

The State Department of Health is authorized to contract with the Mississippi State Medical Association for the purpose of establishing a state-wide program for providing needed medical services at no charge to persons who have no form of health insurance and are unable to pay for such medical services. Under such program, the department shall set the criteria for eligibility to receive such free medical services and, through the county health departments, shall determine which individuals are eligible to receive such services. If the Mississippi State Medical Association contracts with the department for the establishment of such a program, the association shall identify and solicit physicians to participate in the program, set up a network of those physicians willing to participate and arrange to provide needed medical services at no charge to those persons who are determined eligible by the county health departments. For the payment of administration expenses related to the program, the department shall have a fund comprised of such funds appropriated therefor by the Legislature, out of which shall be paid (a) the cost of maintaining a toll-free telephone number for receiving calls from eligible persons and contacting the participating physicians for referral of any appropriate patient; (b) any administrative costs of the Mississippi State Medical Association in setting up a network of participating physicians; and (c) any other administrative expenses of the department and the association related to the program.

SOURCES: Laws, 1990, ch. 544, § 1, eff from and after July 1, 1990.

CHAPTER 4

Department of Mental Health

SEC.

- 41-4-1. Declaration of purpose.
- 41-4-3. State Board of Mental Health.
- 41-4-5. State Department of Mental Health.
- 41-4-7. Powers and duties of board.
- 41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.
- 41-4-9. Advisory councils.
- 41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.
- 41-4-13. Purchases.
- 41-4-15. Repealed.
- 41-4-17. Children's rehabilitation center excepted from state board of mental health jurisdiction.
- 41-4-19. Transfer of funds; issuance of warrants.
- 41-4-21. Fiscal procedures.
- 41-4-23. Security guards and campus police at mental health or mental retardation facilities.
- 41-4-25. Director of mental health facility authorized to transfer patient to another department facility.
- 41-4-27. Mental health crisis center in Brookhaven, Mississippi, named in honor of Senator Billy V. Harvey.

§ 41-4-1. Declaration of purpose.

The purpose of this chapter is to coordinate, develop, improve, plan for, and provide all services for the mentally ill, emotionally disturbed, alcoholic, drug dependent, and mentally retarded persons of this state; to promote, safeguard and protect human dignity, social well-being and general welfare of these persons under the cohesive control of one (1) coordinating and responsible agency so that mental health and mental retardation services and facilities may be uniformly provided more efficiently and economically to any resident of the State of Mississippi; and further to seek means for the prevention of these disabilities.

SOURCES: Laws, 1974, ch. 567, § 1, eff from and after passage (approved April 23, 1974).

Editor's Note — Laws of 2009, ch. 552, § 1 provides:

"SECTION 1. (1) There is created a Joint Legislative Study Committee to study and make recommendations for improving the mental health system in Mississippi. The committee shall, at a minimum, examine the following topics:

"(a) The current delivery system of mental health services by state, regional and local public entities;

"(b) The structure of the State Department of Mental Health, including the makeup of the State Board of Mental Health and the qualifications of the executive director of the department;

“(c) The delivery of mental health services through a community-based system rather than an institutional-based system, focusing on delivery through the community mental health centers; and

“(d) Any other matters of importance relating to the delivery of mental health services in the state.

“(2) The joint committee shall be composed of the following ten (10) members:

“(a) The Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee, who will be the cochairmen of the joint committee;

“(b) The Chairman of the House Appropriations Committee, or his designee;

“(c) The Chairman of the Senate Appropriations Committee, or his designee;

“(d) Three (3) senators to be appointed by the Lieutenant Governor; and

“(e) Three (3) representatives to be appointed by the Speaker of the House.

“(3) Appointments shall be made within thirty (30) days after the effective date of this section. The first meeting of the committee shall be held on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor. A majority of the members of the committee shall constitute a quorum. In the adoption of rules, resolutions and reports, an affirmative vote of a majority of the members of each house shall be required.

“(4) Members of the committee shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the committee may be paid while the Legislature is in session, except that members of the committee may receive per diem and expenses when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during a special session.

“(5) The committee shall make a report of its findings and recommendations to the Legislature not later than December 1, 2009, including any recommended legislation. At the time of submission of its report, the committee shall be dissolved.

“(6) (a) The Lieutenant Governor and the Speaker of the House of Representatives may jointly appoint not more than twelve (12) members to an advisory council to the joint committee.

“(b) The members of the advisory council shall either be engaged professionally in rendering mental health services or general medical services or be consumers of mental health services or representatives of those consumers.

“(c) The advisory council may meet with the Joint Legislative Study Committee and may hold special meetings as deemed necessary.”

Cross References — State mental institutions generally, see §§ 41-17-1 et seq.

Mental retardation and illness centers, facilities and services, see §§ 41-19-1 et seq.

Drug abuse education programs, see § 41-29-169.

Research programs on misuse and abuse of controlled substances, see § 41-29-171.

Alcoholism and alcohol abuse prevention control and treatment, see §§ 41-30-1 et seq.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, *Mental Disability Law: Civil and Criminal*, Second Edition (LexisNexis).

§ 41-4-3. State Board of Mental Health.

(1) There is hereby created a State Board of Mental Health, herein referred to as “board,” consisting of nine (9) members, to be appointed by the

Governor, with the advice and consent of the senate, each of whom shall be a qualified elector. One (1) member shall be appointed from each congressional district as presently constituted; and four (4) members shall be appointed from the state-at-large, one (1) of whom shall be a licensed medical doctor who is a psychiatrist, one (1) of whom shall hold a Ph.D. degree and be a licensed clinical psychologist, one (1) of whom shall be a licensed medical doctor, and one (1) of whom shall be a social worker with experience in the mental health field.

No more than two (2) members of the board shall be appointed from any one (1) congressional district as presently constituted.

Each member of the initial board shall serve for a term of years represented by the number of his congressional district; two (2) state-at-large members shall serve for a term of six (6) years; two (2) state-at-large members shall serve for a term of seven (7) years; subsequent appointments shall be for seven-year terms and the governor shall fill any vacancy for the unexpired term.

The board shall elect a chairman whose term of office shall be one (1) year and until his successor shall be elected.

(2) Each board member shall be entitled to a per diem as is authorized by law and all actual and necessary expenses, including mileage as provided by law, incurred in the discharge of official duties.

(3) The board shall hold regular meetings monthly and such special meetings deemed necessary, except that no action shall be taken unless there is present a quorum of at least five (5) members.

SOURCES: Laws, 1974, ch. 567, § 2; Laws, 1980, ch. 560, § 16, eff from and after passage (approved May 26, 1980).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first sentence of subsection (1). The word “advise” was changed to “advice” so that “...with the advise and consent of the Senate...” will read “...with the advice and consent of the Senate...”. The Joint Committee ratified the correction at its June 3, 2003, meeting.

Cross References — For provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

State board of health, see §§ 41-3-1 et seq.

Duty of State Board of Mental Health to administer Hudspeth Retardation Center, see § 41-19-235.

Procedures for and individual’s procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

ATTORNEY GENERAL OPINIONS

There is no statutory bar to appointment of individual to State Board of Mental Health to represent Fifth Congressional District when individual lived in Fifth

District at time Section 41-4-3 was passed but currently resides in Fourth Congressional District. Shows, Jan. 18, 1994, A.G. Op. #94-003.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, *Mental Disability Law: Civil and Criminal*, Second Edition (LexisNexis).

§ 41-4-5. State Department of Mental Health.

There is hereby created the State Department of Mental Health, herein referred to as “department,” which shall consist of four (4) or more divisions, among them the division of mental retardation, the division of alcohol and drug misuse, the division of mental health, and the division of administration, planning and coordination, and such other divisions as the board shall deem appropriate.

SOURCES: Laws, 1974, ch. 567, § 3, eff from and after passage (approved April 23, 1974).

Cross References — General functions of the division of alcohol and drug misuse, see §§ 41-30-1 et seq.

Assistance by Department of Mental Health in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

JUDICIAL DECISIONS

1. Service of process.

Although a state hospital and a state mental health department were established and controlled by Miss. Code Ann. § 41-4-11(2) and Miss. Code Ann. § 41-4-5 and service of process was governed by Miss. R. Civ. P. 4(d)(5), requiring service upon the Attorney General, the entitles waived the defenses of insufficient process

and insufficient service of process because even though the defenses were properly and timely raised in their answer to a wrongful death action, their subsequent participation in litigation and their failure to pursue the defenses for two years waived the defenses. *East Miss. State Hosp. v. Adams*, 947 So. 2d 887 (Miss. 2007).

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, *Mental Disability Law: Civil and Criminal*, Second Edition (LexisNexis).

§ 41-4-7. Powers and duties of board.

The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time Executive Director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree

or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(c) To supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services. Nothing in this chapter shall preclude the services of a psychiatric/mental health nurse practitioner in accordance with an established nurse practitioner-physician protocol. The board shall have the authority to develop and implement all standards and plans and shall have the authority to establish appropriate actions, including financially punitive actions, to ensure enforcement of these established standards, in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.). This paragraph (c) shall stand repealed on July 1, 2010;

(d) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(e) To collect reasonable fees for its services; however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(f) To certify, coordinate and establish minimum standards and establish minimum required services for regional mental health and mental retardation commissions and other community service providers for community or regional programs and services in mental health, mental retardation, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the state. Such regional mental health and mental retardation commissions and other community service providers shall submit an annual operational plan to the State Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider. However, the department shall not mandate a standard or service, or decertify a regional commission or community service provider for not meeting a standard or service, if the standard or service does not have funding appropriated by the Legislature or have a funding source

from the State Department of Mental Health or a local funding source. The State Board of Mental Health shall promulgate rules and regulations necessary to implement the provisions of this paragraph (f), in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.);

(g) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, mental retardation, alcoholism, drug misuse and developmental disabilities;

(h) To assist community or regional programs consistent with the purposes of this chapter by making grants and contracts from available funds;

(i) To establish and collect reasonable fees for necessary inspection services incidental to certification or compliance;

(j) To accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind;

(k) To receive monies coming to it by way of fees for services or by appropriations;

(l) To serve as the single state agency in receiving and administering any and all funds available from any source for the purpose of service delivery, training, research and education in regard to all forms of mental illness, mental retardation, alcoholism, drug misuse and developmental disabilities, unless such funds are specifically designated to a particular agency or institution by the federal government, the Mississippi Legislature or any other grantor;

(m) To establish mental health holding centers for the purpose of providing short-term emergency mental health treatment, places for holding persons awaiting commitment proceedings or awaiting placement in a state mental health facility following commitment, and for diverting placement in a state mental health facility. These mental health holding facilities shall be readily accessible, available statewide, and be in compliance with emergency services' minimum standards. They shall be comprehensive and available to triage and make appropriate clinical disposition, including the capability to access inpatient services or less restrictive alternatives, as needed, as determined by medical staff. Such facility shall have medical, nursing and behavioral services available on a twenty-four-hour-a-day basis. The board may provide for all or part of the costs of establishing and operating the holding centers in each district from such funds as may be appropriated to the board for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(n) To certify/license case managers, mental health therapists, mental retardation therapists, mental health/retardation program administrators,

addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving the mentally ill, mentally retarded, developmentally disabled or persons with addictions, and shall not be transferable;

(o) To develop formal mental health worker qualifications for regional mental health and mental retardation commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/retardation center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(p) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;

(q) To establish such rules and regulations as may be necessary in carrying out the provisions of this chapter, including the establishment of a formal grievance procedure to investigate and attempt to resolve consumer complaints;

(r) To grant easements for roads, utilities and any other purpose it finds to be in the public interest;

(s) To survey statutory designations, building markers and the names given to mental health/retardation facilities and proceedings in order to recommend deletion of obsolete and offensive terminology relative to the mental health/retardation system. Based upon a recommendation of the executive director, the board shall have the authority to name/rename any facility operated under the auspices of the Department of Mental Health for the sole purpose of deleting such terminology;

(t) To ensure an effective case management system directed at persons who have been discharged from state and private psychiatric hospitals to ensure their continued well-being in the community;

(u) To develop formal service delivery standards designed to measure the quality of services delivered to community clients, as well as the timeliness of services to community clients provided by regional mental health/retardation commissions and other community services providers;

(v) To establish regional state offices to provide mental health crisis intervention centers and services available throughout the state to be utilized on a case-by-case emergency basis. The regional services director, other staff and delivery systems shall meet the minimum standards of the Department of Mental Health;

(w) To require performance contracts with community mental health/mental retardation service providers to contain performance indicators to measure successful outcomes, including diversion of persons from inpatient psychiatric hospitals, rapid/timely response to emergency cases, client satisfaction with services and other relevant performance measures;

(x) To enter into interagency agreements with other state agencies, school districts and other local entities as determined necessary by the department to ensure that local mental health service entities are fulfilling their responsibilities to the overall state plan for behavioral services;

(y) To establish and maintain a toll-free grievance reporting telephone system for the receipt and referral for investigation of all complaints by clients of state and community mental health/retardation facilities;

(z) To establish a peer review/quality assurance evaluation system that assures that appropriate assessment, diagnosis and treatment is provided according to established professional criteria and guidelines;

(aa) To develop and implement state plans for the purpose of assisting with the care and treatment of persons with Alzheimer's disease and other dementia. This plan shall include education and training of service providers, caregivers in the home setting and others who deal with persons with Alzheimer's disease and other dementia, and development of adult day care, family respite care and counseling programs to assist families who maintain persons with Alzheimer's disease and other dementia in the home setting. No agency shall be required to provide any services under this section until such time as sufficient funds have been appropriated or otherwise made available by the Legislature specifically for the purposes of the treatment of persons with Alzheimer's and other dementia;

(bb) Working with the advice and consent of the administration of Ellisville State School, to enter into negotiations with the Economic Development Authority of Jones County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Ellisville State School to the Economic Development Authority of Jones County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with mental retardation served by Ellisville State School will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Jones County, and encourages fairness to the Economic Development Authority of Jones County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Ellisville State School must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for citizens with mental retardation served at Ellisville State School.

If the State Board of Mental Health authorizes the sale of lands owned by Ellisville State School, as provided for under this paragraph (bb), the

monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Ellisville State School Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any interest earned on the principal may be expended solely for the benefits of clients served at Ellisville State School. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Ellisville State School may use any interest earned on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Ellisville State School. Ellisville State School shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of interest earned on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Ellisville State School with an annual report on the Ellisville State School Client's Trust Fund to indicate the total monies in the trust fund, interest earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/retardation services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(cc) Working with the advice and consent of the administration of Boswell Regional Center, to enter into negotiations with the Economic Development Authority of Simpson County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Boswell Regional Center to the Economic Development Authority of Simpson County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with mental retardation served by Boswell Regional Center will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Simpson County, and encourages fairness to the Economic Development Authority of Simpson County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Boswell Regional Center must have the approval of the State Board of Mental Health. The State Board of Mental

Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for citizens with mental retardation served at Boswell Regional Center. In any such exchange, lease or sale of such lands owned by Boswell Regional Center, title to all minerals, oil and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such exchange, lease or sale or not.

If the State Board of Mental Health authorizes the sale of lands owned by Boswell Regional Center, as provided for under this paragraph (cc), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Boswell Regional Center Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any earnings on the principal may be expended solely for the benefits of clients served at Boswell Regional Center. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any earnings on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Boswell Regional Center may use any earnings on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Boswell Regional Center. Boswell Regional Center shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of the earnings on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Boswell Regional Center with an annual report on the Boswell Regional Center Client's Trust Fund to indicate the total monies in the trust fund, interest and other income earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/retardation services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(dd) Notwithstanding any other section of the code, the Board of Mental Health shall be authorized to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee and volunteer shall provide a valid current social security number and/or driver's license

number which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check;

(ee) The Department of Mental Health shall have the authority for the development of a consumer friendly single point of intake and referral system within its service areas for persons with mental illness, mental retardation, developmental disabilities or alcohol or substance abuse who need assistance identifying or accessing appropriate services. The department will develop and implement a comprehensive evaluation procedure ensuring that, where appropriate, the affected person or their parent or legal guardian will be involved in the assessment and planning process. The department, as the point of intake and as service provider, shall have the authority to determine the appropriate institutional, hospital or community care setting for persons who have been diagnosed with mental illness, mental retardation, developmental disabilities and/or alcohol or substance abuse, and may provide for the least restrictive placement if the treating professional believes such a setting is appropriate, if the person affected or their parent or legal guardian wants such services, and if the department can do so with a reasonable modification of the program without creating a fundamental alteration of the program. The least restrictive setting could be an institution, hospital or community setting, based upon the needs of the affected person or their parent or legal guardian;

(ff) To have the sole power and discretion to enter into, sign, execute and deliver long-term or multiyear leases of real and personal property owned by the Department of Mental Health to and from other state and federal agencies and private entities deemed to be in the public's best interest. Any monies derived from such leases shall be deposited into the funds of the Department of Mental Health for its exclusive use. Leases to private entities shall be approved by the Department of Finance and Administration and all leases shall be filed with the Secretary of State;

(gg) To certify and establish minimum standards and minimum required services for county facilities used for housing, feeding and providing medical treatment for any person who has been involuntarily ordered admitted to a treatment center by a court of competent jurisdiction. If the department finds deficiencies in any such county facility or its provider based on the minimum standards and minimum required services established for certification, the department shall give the county or its provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the county or its provider still does not meet the minimum standards and minimum required services, the department may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility. Any cost

incurred by a county receiving an involuntarily committed person from a county with a decertified holding facility shall be reimbursed by the home county to the receiving county.

SOURCES: Laws, 1974, ch. 567, § 4; Laws, 1978, ch. 388, § 1; Laws, 1996, ch. 446, § 1; Laws, 1997, ch. 328, § 1; Laws, 1997, ch. 384, § 1; Laws, 1997, ch. 587, § 2; Laws, 1998, ch. 329, § 1; Laws, 1998, ch. 341, § 1; Laws, 1999, ch. 342, § 1; Laws, 2001, ch. 601, § 1; Laws, 2002, ch. 357, § 1; Laws, 2003, ch. 371, § 1; Laws, 2003, ch. 438, § 1; Laws, 2004, ch. 517, § 1; Laws, 2005, ch. 387, § 1; Laws, 2008, ch. 523, § 1; Laws, 2009, ch. 543, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 329, Laws, 1998, effective July 1, 1998, amended this section. Section 1 of ch. 341, Laws, 1998, effective July 1, 1998, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 20, 1998, meeting of the Committee.

Section 1 of ch. 371, Laws, 2003, effective from and after July 1, 2003 (approved March 13, 2003), amended this section. Section 1 of ch. 438, Laws, 2003, effective from and after July 1, 2003 (approved March 18, 2003), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-3-79 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the June 3, 2003, meeting of the Committee.

Editor's Note — The preamble and § 1 of Laws of 2007, ch. 456, provide:

“WHEREAS, autism is a complex developmental disability that typically appears during the first three (3) years of life and is part of a group of disorders known as Autism Spectrum Disorders (ASD); and

“WHEREAS, as of the effective date of this act [March 26, 2007], at least one (1) in one hundred sixty-six (166) individuals in the United States is diagnosed with autism, making it more common than the occurrences in our population of pediatric cancer, diabetes, and AIDS combined; and

“WHEREAS, autism impairs a person's ability to communicate and relate to others; is associated with rigid routines and repetitive behaviors, such as obsessively arranging objects or following very specific routines; is four (4) times more likely to strike boys than girls; and occurs in all racial, ethnic and social groups; and

“WHEREAS, symptoms of the disability can range from very mild to quite severe, and autistic behaviors not only make life difficult for those individuals who suffer from the disability, but also make life hard for their families, health care providers and teachers; and

“WHEREAS, families coping with this devastating illness are searching for answers about its causes, diagnosis, prevention and treatment, and while there is no known means to prevent the disability, there are indications that early intervention in an appropriate educational setting for at least two (2) years during the preschool years can result in significant improvements for many young children with the disorder; and

“WHEREAS, the Mississippi Legislature recognizes that strategies for how to best identify, treat and accommodate the needs of individuals with autism and of their families are urgently needed in our state; NOW, THEREFORE,”

“SECTION 1. (1) The Caring for Mississippi Individuals with Autism Task Force is created to study and make recommendations to the Mississippi Legislature regarding the growing incidence of autism and Autism Spectrum Disorders (ASD), how to identify, treat and accommodate the needs of individuals with autism and ASD, and ways to improve the delivery and coordination of state services provided to individuals with autism and ASD. Members of the task force shall be composed of the following:

“(a) Three (3) persons who are the parents of children with autism or ASD, with one (1) such person to be appointed by the Governor, one (1) to be appointed by the Lieutenant Governor, and one (1) to be appointed by the Speaker of the House;

“(b) One (1) person who is a member of the governing body of a school district, to be appointed by the State Superintendent of Public Education;

“(c) One (1) person who represents the State Department of Education, to be appointed by the State Superintendent of Public Education;

“(d) One (1) person who is the director of special education services in a school district, to be appointed by the State Superintendent of Public Education;

“(e) One (1) person who is a representative of the State Department of Mental Health, to be appointed by the executive director of the department;

“(f) Three (3) persons who are representatives of the State Department of Mental Health who are from regions in the state that provide services to individuals with autism or ASD, to be appointed by the executive director of the department;

“(g) One (1) person who is a representative of the University of Mississippi Medical Center and who provides medical or other services to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

“(h) Two (2) persons who are Mississippi pediatricians engaged in the private practice of medicine and who provide treatment to individuals with autism or ASD, to be appointed by the Vice Chancellor of the University of Mississippi Medical Center;

“(i) Two (2) persons who are licensed therapists appointed by the President of the Mississippi Speech Language and Hearing Association.

“(2) The task force shall:

“(a) Review the best practices of other states with regard to educational, medical and early intervention services provided to individuals diagnosed with autism or ASD and identify the best practices of other states;

“(b) Review the standard of services provided by local Mississippi school districts and early intervention programs to individuals diagnosed with autism or ASD, identify any additional potential funding sources for school districts, and identify guidelines for measurable educational and instructional goals that can be used by members of the education community for serving children with autism or ASD;

“(c) Assess the medical availability of services currently provided for early screening, diagnosis and treatment of autism and ASD and provide recommendations for enhancing medical services;

“(d) Identify the role of higher education in developing a workforce in Mississippi possessing the skills necessary to assist individuals with autism or ASD in medical, educational, and vocational efforts or in providing additional services associated with autism or ASD;

“(e) Evaluate and identify any and all additional relevant information and make legislative recommendations regarding the development and implementation of a continuum of educational and medical services for individuals with autism or ASD; and

“(f) File a report with those standing committees of the Mississippi State Legislature and with those state agencies having jurisdiction over specific recommendations of the task force, not later than December 1, 2007.

“(3) The task force shall hold its first meeting not later than April 1, 2007, with the date, time and location of the meeting to be designated by the Governor. At that first meeting, the task force shall elect from among its membership a chairman, vice chairman and any other officers determined to be necessary, and shall set the date, time and location of its next meeting.

“(4) The State Department of Mental Health shall provide the staff and other support necessary for the Caring for Mississippi Individuals with Autism Task Force to perform its duties.”

Section 25-43-1.101(3) states that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Amendment Notes — The 2008 amendment added the last sentence in (s).

The 2009 amendment rewrote (c); added (gg); and made a minor stylistic change.

Cross References — Authority of State Board of Mental Health with respect to design, construction and administration of Boswell Retardation Center, see § 41-19-203.

Public educational services and equipment for exceptional children, including children with autism, see §§ 37-23-1 et seq.

ATTORNEY GENERAL OPINIONS

The Department of Mental Health may accept a donation of land, a house, and improvements from the Clarke College Alumni Association and the Department may allow the Association to retain the use of a portion of the house, provided such use is reserved by grant as a condition of the donation. Hendrix, May 9, 2003, A.G. Op. 03-0188.

The Mississippi Department of Mental Health may enter into long-term or multi-year leases of real and personal property without complying with the mandates of G.S. 7-11-11, 29-1-107, or 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

The exemption authority provided the Mississippi Department of Mental Health

(MDMH) in this section does not apply to other state or federal agencies that may be a party to the lease agreement with the MDMH unless these entities have separate and distinct statutory authority to waive the requirements of G.S. 7-11-11, 29-1-107, and 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

The Mississippi Department of Mental Health cannot enter into a long term lease agreements with another state agency unless that agency has specific exemption authority from the lease requirements found in G.S. 7-11-11, 29-1-107, and 29-5-2. Anderson, July 7, 2003, A.G. Op. 03-0242.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

JUDICIAL DECISIONS

1. Immunity from tort.

When the Mississippi Department of Mental Health enacted policies and procedures pursuant to Miss. Code Ann. § 41-4-7(g), it was acting in a discretionary fashion and was thus immune from tort

liability when a patient was injured allegedly because of a placement decision that was made for him while he was committed to a state hospital. Dancy v. East Miss. State Hosp., 944 So. 2d 10 (Miss. 2006).

§ 41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.

(1) A person shall not make, present or cause to be made or presented a material falsification of diagnosis of a Medicaid-eligible client for a claim for

Medicaid mental health services benefits, knowing the diagnosis and claim to be false, fictitious or fraudulent.

(2) A person who violates this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years, or by a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both.

(3) For purposes of subsection (1), if a regional mental health/retardation center submits claims for Medicaid reimbursement or other funds from the Department of Mental Health, the lack of a certified physician or psychologist evaluation of the client for such claim as required under Section 41-4-7(c), Mississippi Code of 1972, shall be deemed a material falsification of diagnosis by the person responsible for making or presenting such claim.

SOURCES: Laws, 1997, ch. 587, § 5, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Mental Health Reform Act of 1997.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-4-9. Advisory councils.

The State Board of Mental Health is hereby authorized and directed to create advisory councils to assist the board and department in the performance and discharge of their duties.

SOURCES: Laws, 1974, ch. 567, § 5, eff from and after passage (approved April 23, 1974).

§ 41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.

(1) On July 1, 1974, the Board of Trustees of Mental Institutions of the State of Mississippi and the Mississippi Interagency Commission on Mental Illness and Mental Retardation shall be abolished. The authority now vested in the State Board of Health relating to mental health, drug misuse and alcoholism is hereby rescinded as of July 1, 1974.

(2) As of July 1, 1974, the Mississippi State Hospital at Whitfield, the East Mississippi State Hospital at Meridian, the Ellisville State School at Ellisville, the North Mississippi Regional Center at Oxford, and any other mental or retardation facility that may be established, shall become subject to the jurisdiction and control of the State Department of Mental Health.

(3) All duties, responsibilities, authority, power, assets, liabilities, contractual rights and obligations, and property rights, whether accruing or vesting in the abolished agencies before or after April 23, 1974, are hereby vested in the State Board of Mental Health.

(4) The board upon recommendation of the executive director shall select the heads of divisions and institutions necessary to carry out the provisions of this chapter who shall have qualifications appropriate to the duties they must discharge.

(5) Employees of the abolished agencies or divisions of agencies holding positions on June 30, 1974, shall be employees of the State Department of Mental Health on July 1, 1974. The board may combine or abolish positions as necessary to carry out the provisions of this chapter.

(6) Subject to the provisions and limitations of this chapter as expressly set forth in Section 41-4-13, all offices, services, programs and other activities of the abolished agencies or divisions of agencies are hereby made offices, services, programs or other activities of the State Department of Mental Health, and the board is hereby authorized to reorganize such offices, services, programs or other activities so as to achieve economy and efficiency; and the said board may establish bureaus, divisions, hospitals, clinics, mental health centers, homes for the mentally retarded, or other facilities for providing mental health services if it finds such action to be in the public interest.

SOURCES: Laws, 1974, ch. 567, § 6(1-6); Laws, 1992, ch. 336, § 23, eff from and after July 1, 1992.

Cross References — Establishment of Boswell Regional Center, see §§ 41-19-201 et seq.

JUDICIAL DECISIONS

1. Service of process.

Although a state hospital and a state mental health department were established and controlled by Miss. Code Ann. § 41-4-11(2) and Miss. Code Ann. § 41-4-5 and service of process was governed by Miss. R. Civ. P. 4(d)(5), requiring service upon the Attorney General, the entitles waived the defenses of insufficient process

and insufficient service of process because even though the defenses were properly and timely raised in their answer to a wrongful death action, their subsequent participation in litigation and their failure to pursue the defenses for two years waived the defenses. *East Miss. State Hosp. v. Adams*, 947 So. 2d 887 (Miss. 2007).

§ 41-4-13. Purchases.

All commodities, equipment and furniture purchased and supply contracts entered into by the board shall be in accord with the provisions of Title 31, Chapter 7, Mississippi Code of 1972. No purchases shall be made from, nor shall any sales be made to, any member of the board.

SOURCES: Laws, 1974, ch. 567, § 6(7), eff from and after passage (approved April 23, 1974).

§ 41-4-15. Repealed.

Repealed by Laws, 1997, ch. 587, § 7, eff from and after July 1, 1997.
[Laws, 1974, ch. 567, § 7]

Editor's Note — Former § 41-4-15 provided that statutes empowering the State Department of Mental Health shall not affect or grant control over the regional mental health commissions or centers.

§ 41-4-17. Children's rehabilitation center excepted from state board of mental health jurisdiction.

Nothing herein contained shall operate to vest the State Board of Mental Health with any authority or jurisdiction over the Mississippi Children's Rehabilitation Center.

SOURCES: Laws, 1974, ch. 567, § 8; Laws, 1981, ch. 498, § 8, eff from and after July 1, 1982.

§ 41-4-19. Transfer of funds; issuance of warrants.

The board, may with the approval of the commission of budget and accounting, require the transfer of funds appropriated for the use of agencies consolidated under the provisions of this chapter. Said funds shall be transferred by the state auditor of public accounts to a separate account in the state treasury. The auditor shall issue his warrants upon requisitions signed by the proper person, officer or officers designated by the board.

SOURCES: Laws, 1974, ch. 567, § 9, eff from and after passage (approved April 23, 1974).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 41-4-21. Fiscal procedures.

For the operations of all facilities placed under the control of the department and for all of its operations, the board shall adopt a uniform system of reporting and accounting approved by the state department of audit, and shall prepare an annual report to the legislature setting forth the disbursements of all moneys appropriated and specifying the facilities and activities upon which funds were expended. It shall prepare annually, or cause to be prepared, a budget for its total operation for the ensuing fiscal period in the manner and form as required by the legislative budget office.

SOURCES: Laws, 1974, ch. 567, § 10; Laws, 1984, ch. 488, § 205, eff from and after July 1, 1984.

Cross References — Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

§ 41-4-23. Security guards and campus police at mental health or mental retardation facilities.

(a) It will be the duty of the director of any mental health or mental retardation facility under the direction or control of the State Department of Mental Health to designate certain employees as security guards and campus police. The names, qualifications, and training of such campus police will be reported to the Executive Director of the State Department of Mental Health and spread upon the official minutes of the State Board of Mental Health.

All campus police, subsequent to employment but prior to performing duties as campus police, will attend and satisfactorily complete the training course required for law enforcement officers at the Law Enforcement Officer's Training Academy or an equivalent facility. Campus police training may be at the expense of the Department of Mental Health and conditioned upon work repayment by the employee in accordance with educational leave regulations promulgated by the State Board of Mental Health. Failure to meet repayment obligations may result in revocation of law enforcement certification in the same manner provided in Section 37-101-291, Mississippi Code of 1972. A complete record of all law enforcement training of each employee will be maintained in each employee's record of employment. A master file of all such employees' training will be kept in the central office of the State Department of Mental Health.

(b) All campus police will be duly constituted peace officers with powers and duties of a constable but such authority may be exercised only on the premises of institutions under the control of the State Department of Mental Health and public property immediately adjacent to such premises. Each person designated as a security guard or campus police will enter into bond in the penalty amount of not less than Ten Thousand Dollars (\$10,000.00), the premium for which shall be paid by the facility employing such security guard or campus police.

(c) All security guards and campus police will exercise their authority while in performance of their duty on any of the facilities under the direction or control of the State Department of Mental Health and public property immediately adjacent to such facilities; will be required to dress in uniforms prescribed by the State Board of Mental Health; and will be authorized to carry weapons. Employees designated as campus police shall be duly sworn and vested with authority to bear arms and make arrests, and shall exercise primarily the responsibilities of the prevention and detection of crime, the apprehension of criminals, and the enforcement of the ordinances and policies of the Department of Mental Health, a political subdivision of the State of Mississippi. Employees designated as campus police shall be considered law enforcement officers within the meaning of Section 45-6-3.

SOURCES: Laws, 1976, ch. 478; Laws, 2002, ch. 359, § 1, eff from and after July 1, 2002.

Cross References — Failure to meet terms of educational loan contract as grounds for revocation of professional license earned through paid educational leave compensation granted under program for paid educational leave for study of certain health care professions, see § 37-101-291.

§ 41-4-25. Director of mental health facility authorized to transfer patient to another department facility.

Notwithstanding any other provision of law, the director of a Department of Mental Health facility has the authority to transfer any patient/resident to another Department of Mental Health facility as necessary for the welfare of that or any other patients/residents.

SOURCES: Laws, 2002, ch. 467, § 1, eff from and after July 1, 2002.

§ 41-4-27. Mental health crisis center in Brookhaven, Mississippi, named in honor of Senator Billy V. Harvey.

The mental health crisis center located in Brookhaven, Mississippi, shall be named in honor of the late Senator Billy V. Harvey. The Department of Mental Health shall place a distinctive plaque in a prominent place within the crisis center, which states the background, accomplishments and service of the late Senator Billy V. Harvey to the State of Mississippi.

SOURCES: Laws, 2007, ch. 529, § 2, eff from and after passage (approved Apr. 18, 2007.)

CHAPTER 5

Governing Authorities for State Hospitals and Institutions

| | |
|--|---------|
| State Eleemosynary Institutions. [Repealed] | |
| Board of Trustees of Mental Institutions | 41-5-31 |
| Penalties. [Repealed] | |

STATE ELEEMOSYNARY INSTITUTIONS [REPEALED]

SEC.

41-5-1 through 41-5-13. Repealed.

§§ 41-5-1 through 41-5-13. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-5-1. [Codes, 1942, §§ 6944, 6945; Laws, 1936, ch. 180]

§ 41-5-3. [Codes, 1942, § 6954; Laws, 1936, ch. 180]

§ 41-5-5. [Codes, 1942, § 6955; Laws, 1936, ch. 180; Laws, 1950, ch. 446; Laws, 1960, ch. 350; Laws, 1962, ch. 399]

§ 41-5-7. [Codes, 1942, §§ 6950, 6956; Laws, 1936, ch. 180]

§ 41-5-9. [Codes, 1942, § 6952.5; Laws, 1958, ch. 464, § 1; Laws, 1960, ch. 349; Laws, 1966, ch. 445, § 17; Laws, 1966, ch. 454, § 1]

§ 41-5-11. [Codes, 1892, § 2828; 1906, § 3209; Hemingway's 1917, § 5726; 1930, § 4620; 1942, § 6975; Laws, 1970, ch. 393, § 1]

§ 41-5-13. [Codes, 1930, § 4621; 1942, § 6976]

Editor's Note — Former § 41-5-1 established the board of state eleemosynary institutions.

Former § 41-5-3 specified when the board would meet, and provided for the election of officers.

Former § 41-5-5 provided for the compensation of the board.

Former § 41-5-7 specified the powers and duties of the board.

Former § 41-5-9 authorized the employment of superintendents for each state charity hospitals.

Former § 41-5-11 required the board to make certain reports to the legislature.

Former § 41-5-13 required superintendents to make certain reports to board of trustees.

BOARD OF TRUSTEES OF MENTAL INSTITUTIONS

SEC.

41-5-31 through 41-5-43. Repealed.

41-5-44. Establishment of nursing home for mentally ill and mentally retarded.

41-5-45 through 41-5-53. Repealed.

41-5-55. Repealed.

§§ 41-5-31 through 41-5-43. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-5-31. [Laws, 1947, 1st Ex. Sess. ch. 9, § 1]

§ 41-5-33. [Laws, 1947, 1st Ex. Sess. ch. 9, § 2]

§ 41-5-35. [Laws, 1947, 1st Ex. Sess. ch. 9, § 3]

§ 41-5-37. [Laws, 1947, 1st Ex. Sess. ch. 9, § 4; Laws, 1966, ch. 453, § 1]

§ 41-5-39. [Laws, 1947, 1st Ex. Sess. ch. 9, § 4; Laws, 1966, ch. 453, § 1]

§ 41-5-41. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 9, 10]

§ 41-5-43. [Laws, 1948, ch. 415, §§ 1-3]

Editor's Note — Former § 41-5-31 created the board of trustees of mental institutions.

Former § 41-5-33 provided for the appointment, term of office and removal of members of the board of trustees of mental institutions and for the filling of vacancies.

Former § 41-5-35 provided for the organizational meeting of the board of trustees of mental institutions and for the employment of an executive secretary.

Former § 41-5-37 provided for the payment of per diem and travel expenses to members of the board of trustees of mental institutions.

Former § 41-5-39 provided for regular and called meetings of the board of trustees of mental institutions and fixed a quorum.

Former § 41-5-41 set out the general powers and duties of the board of trustees of mental institutions.

Former § 41-5-43 vested the board of trustees of mental institutions with specific powers and authority to improve the institutions under its jurisdiction.

The authority, personnel and property of the abolished board of trustees of mental institutions were transferred to the State Board of Mental Health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

§ 41-5-44. Establishment of nursing home for mentally ill and mentally retarded.

(a) The Board of Mental Health is hereby directed, if such is determined to be feasible by the board, to establish, equip, staff and operate nursing homes for mentally retarded patients. Said nursing homes shall be equipped, staffed and operated in accordance with the minimum standards established by the State Department of Health, and shall meet all the requirements for the admission and care of patients eligible for Medicare and Medicaid assistance as required by Titles XVIII and XIX of the Social Security Act, as amended.

(b) Admission to the nursing homes shall be limited to those patients who have been admitted to the mental institutions or mental retardation centers or eligible for admission to the mental institutions or mental retardation centers according to state laws and who have been certified as eligible for Medicare or Medicaid assistance as determined by the provisions of Mississippi laws governing the administration of Titles XVIII and XIX of the Social Security Act, as amended.

(c) The purpose of this section is to provide a nursing facility within the environs of the former Tuberculosis Sanatorium of Mississippi, thereby providing a needed service to eligible patients by making use of available buildings and resources for their care and constituting an additional service rendered by the institution.

SOURCES: Laws, 1973, ch. 497, § 1; Laws, 1980, ch. 493, § 12; Laws, 1983, ch. 522, § 51; Laws, 1986, ch. 437, § 12, eff from and after July 1, 1986.

Cross References — Establishment and operation of Boswell Regional Center as supplemental to this section, see §§ 41-19-201 through 41-19-213.

Procedures for and individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Definition of a mentally ill and mentally retarded person under provisions for treatment of persons in need of mental health treatment, see § 41-21-61.

Director's transfer of civilly committed patients between facilities operated by department of mental health, see § 41-21-87.

Voluntary admission of mentally ill and retarded persons of particular age or marital status, see § 41-21-103.

Federal Aspects — Titles XVIII and XIX of the Social Security Act, see 42 USCS § 1395 et seq.

RESEARCH REFERENCES

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender). Carlson, Long-Term Care Advocacy (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, (LexisNexis).

§§ 41-5-45 through 41-5-53. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 42-5-45. [Laws, 1947, 1st Ex. Sess. ch. 9, § 14]

§ 41-5-47. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 12, 13; Laws, 1970, ch. 521, § 1]

§ 41-5-49. [Laws, 1947, 1st Ex. Sess. ch. 9, §§ 12, 13; Laws, 1970, ch. 521, § 2]

§ 41-5-51. [Laws, 1947, 1st Ex. Sess. ch. 9, § 5]

§ 41-5-53. [Laws, 1947, 1st Ex. Sess. ch. 9, § 7]

Editor's Note — Former § 41-5-45 dealt with the keeping of the records and accounts of the board of trustees of mental institutions, required them to be open for public inspection, and required the board to inspect the mental institutions regularly and frequently.

Former § 41-5-47 required the board of trustees of mental institutions to provide a uniform accounting system for the mental institutions, to make an annual report to the legislature, to prepare an annual budget for each institution, and to be the exclusive representative of the mental institutions in dealing with the legislature.

Former § 41-5-49 contained specific requirements as to the form and contents of the annual report made to the Legislature by the board of trustees of mental institutions.

Former § 41-5-51 abolished the office of superintendent for each mental institution under the jurisdiction of the board of trustees of mental institutions.

Former § 41-5-53 dealt with the employment, qualifications, compensation, powers, authority, duties, and removal of a director for each institution under the jurisdiction of the board of trustees of mental institutions.

§ 41-5-55. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-5-55. [Codes, 1942, § 6946-11; Laws, 1947, 1st Ex. Sess. ch. 9, § 11; Laws, 1974, ch. 567, § 11, eff from and after passage (approved April 23, 1974).]

Editor's Note — Former § 41-5-55 prohibited the apprenticing of mentally ill or mentally retarded patients.

PENALTIES
[REPEALED]

SEC.

41-5-81. Repealed.

§ 41-5-81. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-5-81. [Codes, 1930, § 4617; 1942, § 6972; Laws, 1924, ch. 307.]

Editor's Note — Former § 41-5-81 provided certain criminal penalties for apprenticing mentally ill or mentally retarded patients.

CHAPTER 7

Hospital and Health Care Commissions

| | |
|--|----------|
| State Hospital Commission; Indigent Care Law | 41-7-1 |
| Hospital Reimbursement Commission | 41-7-71 |
| Health Care Commission | 41-7-111 |
| Health Care Certificate of Need Law of 1979 | 41-7-171 |
| Statewide Health Coordinating Council. [Repealed] | |
| Health Maintenance Organizations. [Repealed] | |

STATE HOSPITAL COMMISSION; INDIGENT CARE LAW

SEC.

41-7-1 through 41-7-19. Repealed.

41-7-21. Local boards of trustees may enact rules and regulations.

41-7-23 through 41-7-33. Repealed

41-7-35. Hospitals may not exact additional payments from patients.

41-7-37. Repealed.

41-7-39. Wrongfully obtaining care, treatment or hospitalization.

41-7-41 and 41-7-43. Repealed.

41-7-45. Laws governing funds to apply.

§§ 41-7-1 through 41-7-19. Repealed.

Repealed by Laws, 1986, ch. 437, § 6, eff from and after July 1, 1986.

§ 41-7-1. [Codes, 1942, § 7130; Laws, 1936, ch. 178]

§ 41-7-3. [Codes, 1942, § 7131; Laws, 1936, ch. 178; Laws, 1978, ch. 369,
§ 1]

§ 41-7-5. [Codes, 1942, § 7145; Laws, 1936, ch. 178]

§ 41-7-7. [Codes, 1942, § 7146; Laws, 1936, ch. 178]

§ 41-7-9. [Codes, 1942, § 7132; Laws, 1936, ch. 178; Laws, 1944, ch. 278;
Laws, 1946, ch. 378; Laws, 1950, ch. 460; Laws, 1960, ch. 354, § 1; Laws, 1962,
ch. 406, § 1; Laws, 1964, ch. 432, § 1; Laws, 1976, ch. 343; Laws, 1982, ch.
458.]

§ 41-7-11. [Codes, 1942, § 7134; Laws, 1936, ch. 178; Laws, 1960, ch. 354,
§ 2]

§ 41-7-13. [Codes, 1942, § 7136; Laws, 1936, ch. 178; Laws, 1938, ch. 327;
Laws, 1960, ch. 354, § 4; Laws, 1981, ch. 404, § 1]

§ 41-7-15. [Codes, 1942, § 7135; Laws, 1936, ch. 178; Laws, 1960, ch. 354,
§ 3]

§ 41-7-17. [Codes, 1942, § 7137; Laws, 1936, ch. 178; Laws, 1960, ch. 354,
§ 5; Laws, 1964, ch. 433, § 1]

§ 41-7-19. [Codes, 1942, § 7140; Laws, 1936, ch. 178; Laws, 1960, ch. 354,
§ 8]

Editor's Note — Former § 41-7-1 created the State Hospital Commission, and specified its membership.

Former § 41-7-3 directed that the commission be organized and personnel be selected.

Former § 41-7-5 specified the terms of members of the commission and their compensation.

Former § 41-7-7 specified quorum requirements for commission meetings.

Former § 41-7-9 specified the duties of the commission.

Former § 41-7-11 pertained to the establishment of minimum requirements for a standard hospital.

Former § 41-7-13 specified eligibility requirements for reimbursement for the care of indigent persons.

Former § 41-7-15 provided for certificates of eligibility and compliance.

Former § 41-7-17 provided for the establishment of local boards of trustees.

Former § 41-7-19 directed that local boards of trustees visit standard hospitals.

Laws of 1986, ch. 437, §§ 1, 2, effective from and after July 1, 1986, provide as follows:

“SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

“SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act.”

§ 41-7-21. Local boards of trustees may enact rules and regulations.

The board of trustees for such hospital or hospitals are authorized to adopt such other rules and regulations as may become necessary in each community to protect the patients and charity fund, and to make an equitable distribution of said funds in said counties and districts in the territories served by their respective institutions.

SOURCES: Codes, 1942, § 7141; Laws, 1936, ch. 178.

§§ 41-7-23 through 41-7-33. Repealed.

Repealed by Laws 1986, ch. 437, § 6, eff from and after July 1, 1986.

§ 41-7-23. [Codes, 1942, § 7139; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 7]

§ 41-7-25. [Codes, 1942, § 7139; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 7]

§ 41-7-27. [Codes, 1942, § 7138; Laws, 1936, ch. 178; Laws, 1938, ch. 267; Laws, 1960, ch. 354, § 6; Laws, 1964, ch. 434, § 1; Laws, 1972, ch. 424, § 1; Laws, 1977, ch. 345; Laws, 1980, ch. 409]

§ 41-7-29. [Codes, 1942, § 7138-01; Laws, 1946, ch. 482, §§ 1-5; Laws, 1960, ch. 354, § 13]

§ 41-7-31. [Codes, 1942, § 7138; Laws, 1936, ch. 178; Laws, 1938, ch. 267; Laws, 1960, ch. 354, § 6; Laws, 1964, ch. 434, § 1]

§ 41-7-33. [Codes, 1942, § 7142; Laws, 1936, ch. 178; Laws, 1962, ch. 406, § 2; Laws, 1964, ch. 434, § 2]

Editor's Note — Former § 41-7-23 directed local boards to make certain reports.

Former § 41-7-25 specified reimbursement procedures.

Former § 41-7-27 pertained to admission of patients and certificates of eligibility.

Former § 41-7-29 pertained to admission of patients having cancer.

Former § 41-7-31 required the state hospital commission to make reports concerning treatments.

Former § 41-7-33 required the state hospital commission to make reports concerning expenditures.

§ 41-7-35. Hospitals may not exact additional payments from patients.

No hospital shall be allowed to charge, accept or retain any additional payment from or in behalf of any indigent patient for hospital services rendered while being cared for under the terms of Sections 41-7-1 through 41-7-45, unless it appears that the patient was wrongfully or mistakenly qualified or admitted as an indigent patient. This section shall not be construed, however, to prohibit any hospital from charging, accepting or retaining lawful payments or contributions from governmental or other public sources or from philanthropic or charitable sources having an impersonal interest in the patients involved.

SOURCES: Codes, 1942, § 7132; Laws, 1936, ch. 178; Laws, 1944, ch. 278; Laws, 1946, ch. 378; Laws, 1950, ch. 460; Laws, 1960, ch. 354, § 1; Laws, 1962, ch. 406, § 1; Laws, 1964, ch. 432, § 1, eff from and after June 30, 1964.

Editor's Note — This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Law of, 1986, ch. 437, § 6, eff from and after July 1, 1986.

Cross References — Power of board of supervisors to make contributions, see § 19-5-93.

Municipal contributions for hospital purposes, see §§ 21-19-5, 21-19-7.

§ 41-7-37. Repealed.

Repealed by Laws, 1979, ch. 400, § 2, eff from and after July 1, 1979.

[En Laws, 1960, ch. 354, § 11]

Editor's Note — Former § 41-7-37 prohibited physicians on the staffs of hospitals participating in the indigent care program from taking fees for medical or surgical services rendered indigent patients.

§ 41-7-39. Wrongfully obtaining care, treatment or hospitalization.

Any person knowingly obtaining or attempting to obtain, or any person, firm or corporation who knowingly aids or abets any person to obtain, or attempt to obtain, by means of a willfully false statement or representation or impersonation, or other fraudulent device, any care, treatment or hospitalization provided by the provisions of Sections 41-7-1 through 41-7-45, to which he is not lawfully entitled shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

SOURCES: Codes, 1942, § 7144.5; Laws, 1960, ch. 354, § 12, eff July 1, 1960.

Editor's Note — This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Laws of 1986, ch. 437, § 6, eff from and after July 1, 1986.

§§ 41-7-41 and 41-7-43. Repealed.

Repealed by Laws, 1986, ch. 437, § 6, eff from and after July 1, 1986.

§ 41-7-41. [Codes, 1942, § 7133; Laws, 1936, ch. 178]

§ 41-7-43. [Codes, 1942, § 7143; Laws, 1936, ch. 178; Laws, 1962, ch. 406, § 2; Laws, 1964, ch. 434, § 2; Laws, 1970, ch. 416, § 1; Laws, 1981, ch. 404, § 2; Laws, 1983, ch. 501]

Editor's Note — Former § 41-7-41 authorized the commission to take steps necessary to obtain federal funds.

Former § 41-7-43 pertained to the allocation of funds appropriated for the support of qualified hospitals.

§ 41-7-45. Laws governing funds to apply.

All sums of money that may be appropriated to carry out the provisions of Sections 41-7-1 through 41-7-45 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SOURCES: Codes, 1942, § 7144; Laws, 1936, ch. 178; Laws, 1960, ch. 354, § 10; Laws, 1984, ch. 488, § 206, eff from and after July 1, 1984.

Editor's Note — This section contains a reference to §§ 41-7-1 through 41-7-45. All of these sections, except for §§ 41-7-21, 41-7-35, 41-7-39, and 41-7-45, were repealed by Laws of 1986, ch. 437, § 6, eff from and after July 1, 1986.

Laws of 1984, ch. 488, § 341, provides as follows:

“SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun.”

HOSPITAL REIMBURSEMENT COMMISSION

SEC.

41-7-71. Declaration of policy.

41-7-73. State institutions enumerated.

41-7-75 and 41-7-77. Repealed.

41-7-79. Assessment and collection of charges by state institutions.

41-7-81 through 41-7-85. Repealed.

41-7-87. No priority in admitting patients to institutions.

41-7-89. Repealed.

41-7-90. Patient's personal deposit fund; applied to payment of care; disposition of personal property.

41-7-91. Deposit of funds.

41-7-93. Repealed.

41-7-95. Moneys exempted; certain sections not repealed.

§ 41-7-71. Declaration of policy.

It is hereby declared to be the policy of the State of Mississippi that a patient or resident in a state institution whose estate is sufficient, or, if not, who has (a) a spouse; or (b) one or more parent(s) if said patient or resident is under the age of twenty-one (21) years and unmarried, who is(are) financially able to pay all or any part of the cost of such hospitalization or treatment, shall be required to pay for all or part of his or her maintenance in such institution. No resident of this state shall be refused admission to or treatment in any of the institutions enumerated in Section 41-7-73 because of his inability to pay all or any of said costs. It shall be the duty of the director or the governing board, as appropriate, of the admitting institution to ascertain the financial ability of the patient or resident and to establish an amount to be paid monthly based on current ability to pay, with a continuing claim for the difference in the amount paid and the maximum charges assessed that could be made as determined pursuant to Section 41-7-79.

SOURCES: Codes, 1942, § 7146.7-01; Laws, 1962, ch. 410, § 1; Laws, 1983, ch. 337; Laws, 1986, ch. 437, § 8; Laws, 1988, ch. 445, § 1, eff from and after July 1, 1988.

Cross References — Sliding scale fees, see § 41-7-79.

JUDICIAL DECISIONS

1. In general.

The provisions of §§ 41-7-71 et seq., which empowered the Mississippi Hospital Reimbursement Commission to seek reimbursement from the estate of one civilly and involuntarily committed for all or part of the cost of care and treatment rendered by a state hospital, constitute an exception to the general rule of § 41-17-1 that persons are entitled to treatment at the Mississippi State Hospital "free of charge"; moreover, in an action seeking reimbursement from the estate of one civilly and involuntarily committed, those provisions did not operate as *ex post facto* laws, since a previous act required reimbursement from solvent incompetent persons for care and treatment at state mental hospitals, and since the Commission claimed nothing against the estate for

care or treatment rendered prior to the statutes' effective date. *Chill v. Mississippi Hosp. Reimbursement Comm'n*, 429 So. 2d 574 (Miss. 1983).

Hospital's contract with state commission on hospital care involving state grant of aid, whereby the hospital agreed to furnish up to 10 per cent of the bed capacity free to indigent patients, does not contemplate the use of state funds to reimburse the hospital for charity patients, in view of the facts that a state charity hospital was already located in the same county, that there is no authority in the commission to make such reimbursement, and that the hospital agreed that no such reimbursement could or would be requested. *Craig v. Mercy Hospital-Street Mem.*, 209 Miss. 427, 45 So. 2d 809 (1950), error overruled, 209 Miss. 490, 47 So. 2d 867 (1950).

RESEARCH REFERENCES

ALR. Infant's liability for medical, dental, or hospital services. 53 A.L.R.4th 1249.

§ 41-7-73. State institutions enumerated.

The term “state institution” or “state institutions” as used in Sections 41-7-71 through 41-7-95 shall include the following: Mississippi State Hospital at Whitfield, Ellisville State School, East Mississippi State Hospital at Meridian, Mississippi Children’s Rehabilitation Center, North Mississippi Regional Center, Hudspeith Regional Center, South Mississippi Regional Center, North Mississippi State Hospital at Tupelo, South Mississippi State Hospital at Purvis, University of Mississippi Hospital, Boswell Regional Center, the Mississippi Adolescent Center at Brookhaven, the Specialized Treatment Facility for the Emotionally Disturbed in Harrison County, and the Central Mississippi Residential Center at Newton.

SOURCES: Codes, 1942, § 7146.7-04; Laws, 1962, ch. 410, § 4; Laws, 1975, ch. 365; Laws, 1981, ch. 539, § 4; Laws, 1986, ch. 437, § 9; Laws, 1992, ch. 336, § 22; Laws, 2002, ch. 350, § 1; Laws, 2009, ch. 563, § 14, eff from and after passage (approved May 13, 2009.)

Editor’s Note — Sections 41-7-75 and 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93 referred to in this section were repealed by Laws of 1986, ch. 437, § 7, effective from and after July 1, 1986.

Amendment Notes — The 2009 amendment substituted “Mississippi Adolescent Center” for “Juvenile Rehabilitation Center” near the end of the paragraph.

Cross References — University of Mississippi Hospital, see §§ 37-115-25 et seq.

Prohibition against refusal to admit or treat a person, see § 41-7-71.

Deposit with director or other officer of state institution funds for personal benefit of patients, see § 41-7-90.

Authorization for directors of state institutions listed in this section to accept federal aid to care for wartime veterans, see § 41-17-11.

Assessment of support and maintenance costs of patients at Boswell Retardation Center, see § 41-19-209.

§§ 41-7-75 and 41-7-77. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.

§ 41-7-75. [Codes, 1942, § 7146.7-02; Laws, 1962, ch. 410, § 2]

§ 41-7-77. [Codes, 1942, § 7146.7-08; Laws, 1962, ch. 410, § 8]

Editor’s Note — Former § 41-7-75 created the hospital reimbursement commission, and specified its members.

Former § 41-7-77 directed the capitol commission to furnish suitable office space for the hospital reimbursement commission.

§ 41-7-79. Assessment and collection of charges by state institutions.

Each state institution shall have the power to assess and collect charges from patients, patients’ estates and from all persons legally liable for the cost of care of such patients in such state institution. The maximum charges which may be made shall be based on the estimated cost of operating the institution, and such costs shall include a reasonable amount for depreciation. The director

or the governing board of each institution, as appropriate, shall investigate or cause to be investigated the financial ability of each patient, his or her estate, and all other persons legally liable for the cost or care of the patient, and the charges assessed shall be in accordance with the ability of the person assessed to pay.

The Director of the Mississippi Children's Rehabilitation Center or the governing board of the center, as appropriate, upon conclusion of the investigation of the financial ability of each patient and all other persons legally liable for the cost of care of the patient, shall assess a fee against each patient based on the financial ability of such patient or others legally liable for such patient to pay. The fee shall be adjustable and commensurate with the patient's financial ability to pay. In order to receive the benefits of the sliding scale fee each patient is required to provide for the Children's Rehabilitation Center sufficient financial information in order to allow the center to make a determination as to whether or not a reduced fee is appropriate. The center shall not utilize such fee scale for any patient unless the patient has a need for additional treatment, and has no insurance covering his treatment or such insurance is exhausted. The Children's Rehabilitation Center shall make every effort to collect the total charges from a patient, the patient's estate and from all persons legally liable for the cost of care of the patient before it may utilize a sliding fee scale for the patient.

After three (3) good faith attempts have been made to collect a remaining balance of such charges, and upon the recommendation of the Children's Rehabilitation Center fiscal officer, said balance may be declared uncollectible and worthless, and no longer listed as an asset.

In the determination of ability to pay, the director or governing board shall not work an undue hardship on any patient or person legally responsible for such a patient. The value of a homestead shall not be considered in determining the ability to pay. The number of dependents of a patient or the party legally responsible for such patient shall be considered in determining ability to pay. The value of real and/or personal property may also be considered.

The director or the governing board, as appropriate, shall have authority to enter into agreements with the patients or others legally liable whereby periodic payments can be made on said accounts. The director or governing board may accept notes, secured or open, or any other evidences of indebtedness.

The director or the governing board, as appropriate, of each state institution shall have the right to institute suits where necessary or advisable, and it shall be the duty of the Attorney General to institute such suits either in the name of the institution or in the name of the State of Mississippi. Except in matters involving the administration of estates, the probate of wills or the appointment of guardians or conservators, venue for such suits shall lie in the county in which the institution is located, and the venue shall not be subject to change.

SOURCES: Codes, 1942, §§ 7146.7-01, 7146.7-05; Laws, 1962, ch. 410, §§ 1, 5; Laws, 1981, ch. 539, § 2; Laws, 1986, ch. 437, § 10; Laws, 1988, ch. 445, § 2, eff from and after July 1, 1988.

Cross References — Suits by Attorney General on behalf of state and state officers, see §§ 7-5-37, 7-5-39.

Duty of the director of the admitting institution to ascertain the financial ability of a patient or resident to pay, see § 41-7-71.

Application of funds in patient's personal deposit fund to payment of care, see § 41-7-90.

Provision that, after death or discharge of patient, any unexpended balance remaining in his personal deposit fund shall be applied for payment of care and other costs, not to exceed the maximum charge that could be made under this section, see § 41-7-90.

§§ 41-7-81 through 41-7-85. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.

§ 41-7-81. [Codes, 1942, § 7146.7-09; Laws, 1962, ch. 410, § 9; Laws, 1984, ch. 488, § 207]

§ 41-7-83. [Codes, 1942, § 7146.7-03; Laws, 1962, ch. 410, § 3; Laws, 1981, ch. 539, § 3]

§ 41-7-85. [Codes, 1942, § 7146.7-09; Laws, 1962, ch. 410, § 9]

Editor's Note — Former § 41-7-81 directed the hospital reimbursement commission to file monthly reports.

Former § 41-7-83 provided for a director of the hospital reimbursement commission.

Former § 41-7-85 directed the heads of state institutions to file reports reflecting financial ability of all patients, and authorized the acceptance of payments from patients on accounts.

§ 41-7-87. No priority in admitting patients to institutions.

No state institution shall give admission priority because of a patient's ability to pay. However, nothing in this section shall in any way affect the duties, responsibilities and requirements imposed on the University of Mississippi Hospital by Sections 37-115-25, 37-115-31, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 7146.7-10; Laws, 1962, ch. 410, § 10, eff from and after July 1, 1962.

§ 41-7-89. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.

[Codes, 1942, § 7146.7-06; Laws, 1962, ch. 410, § 6]

Editor's Note — Former § 41-7-89 directed other state agencies, departments and institutions to cooperate with the hospital reimbursement commission.

§ 41-7-90. Patient's personal deposit fund; applied to payment of care; disposition of personal property.

(1) Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any patient in any state institution enumerated in Section 41-7-73, and any funds otherwise received and held from, for or on behalf of any such patient, shall be deposited by the director or

other proper officer of the institution to the credit of that patient in an account which shall be known as the Patient's Personal Deposit Fund. Whenever the sum belonging to any patient, deposited to the patient's personal deposit fund, exceeds the sum of Seven Hundred Fifty Dollars (\$750.00), the excess may be applied to the payment of the care, support, maintenance and medical attention of the patient.

(2) After the death or discharge of any patient for whose benefit any such fund has heretofore or shall hereafter be provided, any unexpended balance remaining in his personal deposit fund shall be applied for payment of care, cost of support, maintenance and medical attention, not to exceed the maximum charge that could be made as determined pursuant to Section 41-7-79. In the event any unexpended balance remains in that patient's personal deposit fund after complete reimbursement has been made for payment of care, support, maintenance and medical attention, and the director or other proper officer of the state institution has been or shall be unable to locate the person or persons entitled to such unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of such death or discharge, deposit the unexpended balance to the credit of that institution's operating fund.

(3) All personal property, other than money, left by a patient at any state institution which has remained unclaimed for one (1) year shall be disposed of in any manner determined by the director or other proper officer of the institution.

(4) The provisions of Section 43-13-120 shall not be applicable to any Medicaid patient in a state institution listed in Section 41-7-73, who has a personal deposit fund as provided for in this section.

SOURCES: Laws, 1981, ch. 539, § 1; Laws, 1986, ch. 437, § 11, eff from and after July 1, 1986.

§ 41-7-91. Deposit of funds.

All funds collected under the provisions of Sections 41-7-71 through 41-7-95 shall be deposited in the state treasury to the credit of the operating fund of the institution where the patient is confined or is receiving treatment.

SOURCES: Codes, 1942, § 7146.7-07; Laws, 1963, ch. 410, § 7, eff from and after July 1, 1962.

Editor's Note — Sections 41-7-75, 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93, referred to in this section, were repealed by Laws of 1986, Ch. 437, § 7, effective from and after July 1, 1986.

§ 41-7-93. Repealed.

Repealed by Laws, 1986, ch. 437, § 7, eff from and after July 1, 1986.
[Codes, 1942, § 7146.7-07; Laws, 1962, ch. 410, § 7]

Editor's Note — Former § 41-7-93 provided that the salaries and expenses of the director of the hospital reimbursement commission would be prorated against the several state institutions.

§ 41-7-95. Moneys exempted; certain sections not repealed.

All moneys collected under the provisions of Section 11-7-13 of the Mississippi Code of 1972, shall be exempted from the provisions of Sections 41-7-71 through 41-7-95.

Nothing in Sections 41-7-71 through 41-7-95 shall be construed as repealing Sections 85-3-17 and 85-3-19.

SOURCES: Codes, 1942, §§ 7146.7-12, 7146.7-13; Laws, 1962, ch. 410, §§ 12, 13, eff from and after July 1, 1962.

Editor's Note — Sections 41-7-75, 41-7-77, 41-7-81 through 41-7-85, 41-7-89 and 41-7-93, referred to in this section, were repealed by Laws of 1986, Ch. 437, § 7, effective from and after July 1, 1986.

HEALTH CARE COMMISSION

SEC.

41-7-111 through 41-7-131. Repealed.

41-7-133. Utilization of federal funds.

41-7-135 through 41-7-139. Repealed.

41-7-140. Continuing education program for hospital trustees.

41-7-141 and 41-7-143. Repealed.

41-7-145. Conveyance of existing hospital facilities or other property.

41-7-147. Repealed.

41-7-149. Annual audit.

§§ 41-7-111 through 41-7-131. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

§ 41-7-111. [Laws, 1946, ch. 363, § 1; Laws, 1948, ch. 433, § 1; Laws, 1970, ch. 417, § 1]

§ 41-7-113. [Laws, 1946, ch. 363, § 2; Laws, 1948, ch. 433, § 2; Laws, 1958, ch. 364, § 1; 1966, ch. 445, § 20]

§ 41-7-115. [Laws, 1946, ch. 363, § 3; Laws, 1954, ch. 286, § 1]

§ 41-7-117. [Laws, 1946, ch. 363, § 4; Laws, 1954, ch. 286, § 2]

§ 41-7-119. [Laws, 1946, ch. 363, § 5; Laws, 1948, ch. 433, § 3; Laws, 1954, ch. 286, § 3; Laws, 1958, ch. 364, § 2]

§ 41-7-121. [Laws, 1946, ch. 363, § 5; Laws, 1948, ch. 433, § 3; Laws, 1954, ch. 286, § 3; Laws, 1958, ch. 364, § 2]

§ 41-7-123. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-125. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-127. [Laws, 1946, ch. 363, § 6; Laws, 1948, ch. 430, § 1; Laws, 1954, chs. 286, § 4, 292; Laws, 1958, ch. 355; Laws, 1962, ch. 407, § 1]

§ 41-7-129. [Laws, 1962, ch. 412, §§ 1, 2]

§ 41-7-131. [Laws, 1946, ch. 363, § 13; Laws, 1954, ch. 286, § 8]

Editor's Note — Former § 41-7-111 created the Mississippi Commission on Hospital Care and provided for the appointment of members, terms of office, the filling of vacancies, the organization of the commission, and the per diem and travel expenses of members.

Former § 41-7-113 dealt with the rules and records of the commission on hospital care, the employment of an executive director and other employees, and the procurement of space, equipment and supplies.

Former § 41-7-115 dealt with the general powers and duties of the commission on hospital care.

Former § 41-7-117 made it the duty of the commission on hospital care to prepare a state-wide hospital plan, to conduct studies and surveys, and to report findings and recommendations to the legislature at each regular session.

Former § 41-9-119 provided for grants-in-aid by the commission on hospital care for hospitals and other health care facilities, including schools of nursing, and placed limits on the size and number of such grants.

Former § 41-7-121 dealt with applications to the commission on hospital care for grants-in-aid for hospital and other health care facilities.

Former § 41-7-123 set out the details for the making of grants-in-aid for hospitals and other health care facilities by the commission on hospital care.

Former § 41-7-125 provided for a twenty-year inchoate lien in favor of the state on property of hospitals or other health care facilities receiving grants-in-aid from the commission on hospital care, with the right to recover upon the occurrence of certain specified events.

Former § 41-7-127 set out the conditions under which the inchoate lien provided for in former § 41-7-125 might be released by the state and provided the method for so doing.

Former § 41-7-129 provided for grants-in-aid for student nurse dormitories on campuses of junior colleges.

Former § 41-7-131 provided for grants-in-aid for the purchase, reconstruction or remodeling of existing hospital or other health facilities.

§ 41-7-133. Utilization of federal funds.

Federal funds, if available, may be utilized to increase, expand or enlarge (1) any hospital or other health facility provided for and constructed in part by a grant under Sections 41-7-111 through 41-7-149, or (2) any hospital constructed in part by a grant under said sections, so as to provide for diagnostic or treatment centers and/or hospitals for the chronically ill and impaired and/or rehabilitation facilities and/or nursing homes, to be operated in connection with such hospital. However, such federal funds shall not be included in computing the cost of such construction for the purpose of determining the maximum amount of the grant of state funds. Such state funds, together with locally provided funds, may be used, however, for the purpose of matching any available federal funds. In determining the cost of any such construction, there may be included the fair market value of any equipment, material or building donated or otherwise made permanently available by any local group, political subdivision or individual, but the value of the services of any such group or person shall not be included.

SOURCES: Codes, 1942, § 7146-07; Laws, 1946, ch. 363, § 7; Laws, 1954, ch. 286, § 5; Laws, 1958, ch. 355, § 3.

Editor's Note — Sections 41-7-111 through 41-7-131, 41-7-135 through 41-7-139, 41-7-141, 41-7-143 and 41-7-147, referred to in this section, were repealed by Laws of 1979, ch. 451, § 26, eff from and after July 1, 1979.

§§ 41-7-135 through 41-7-139. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

§ 41-7-135. [Laws, 1946, ch. 363, § 8; Laws, 1948, ch. 433, § 4; Laws, 1950, ch. 353, § 1]

§ 41-7-137. [Laws, 1946, ch. 363, § 9; Laws, 1948, ch. 433, § 5; Laws, 1954, ch. 286, § 6]

§ 41-7-139. [Laws, 1946, ch. 363, § 10; Laws, 1954, ch. 286, § 7]

Editor's Note — Former § 41-7-135 required priorities based on need and optimum effectiveness in the making of grants-in-aid for hospitals and other health related facilities.

Former § 41-7-137 empowered the commission on hospital care to purchase hospital or related health facility equipment, supplies and accessories and to make grants thereof at cost value plus handling expense in lieu of monetary grants.

Former § 41-7-139 authorized the commission on hospital care to establish a state-wide nurse education program and provided for the funding thereof.

§ 41-7-140. Continuing education program for hospital trustees.

(1) Members of boards of trustees of hospitals who bear legal responsibility for the operation of such hospitals shall have made available by the State Department of Health a course of not less than ten (10) clock hours annually of training as continuing education.

(2) The State Department of Health, through regulations issued in accordance with law, shall prescribe the curriculum to be pursued, including subjects and areas of information deemed pertinent to the duties, activities and exercise of authority as hospital trustees; provided, however, that the department shall solicit advice and recommendations appertaining to such instruction from associations and other cognizant sources on hospital operation within the state.

(3) Such continuing education, attendance upon which shall not be mandatory for hospital trustees, shall be offered at such times and places so as to minimize inconvenience and hardship upon hospital trustees. Each hospital is hereby authorized and empowered to reimburse each trustee actual reasonable expenses incurred in attending such meetings.

(4) The department shall maintain records of all such continuing education programs and the names of all hospital trustees receiving such training.

SOURCES: Laws, 1974, ch. 453; Laws, 1979, ch. 451, § 20; Laws, 1981, ch. 436, § 1; Laws, 1981, ch. 484, § 16; Laws, 1982, ch. 395, § 3; Laws, 1986, ch. 437, § 13, eff from and after July 1, 1986.

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

§§ 41-7-141 and 41-7-143. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

[Laws, 1946, ch. 363, §§ 11, 12]

Editor's Note — Former § 41-7-141 authorized the commission on hospital care to assist in the development of a pre-payment plan of hospitalization or hospitalization insurance.

Former § 41-7-143 provided for the disposition of the five existing state charity hospitals.

§ 41-7-145. Conveyance of existing hospital facilities or other property.

Any county board of supervisors or the governing authority of any municipality may, in carrying out or in furtherance of the provisions of Sections 41-7-111 through 41-7-149, or any program or plan adopted under such sections, as a part of any contribution, cash or otherwise, that may be required by such county or municipality, convey to any municipality, county or other political subdivision or agency of the state any property, real or personal, or any existing hospital facilities or other existing facilities suitable for hospital purposes owned by such county or municipality and not needed by it for governmental purposes. Such conveyance shall be upon such terms and conditions as may be agreed upon.

SOURCES: Codes, 1942, § 7146-12; Laws, 1946, ch. 363, § 12.

Editor's Note — Sections 41-7-111 through 41-7-131, 41-7-135 through 41-7-139, 41-7-141, 41-7-143 and 41-7-147, referred to in this section, were repealed by Laws of 1979, ch. 451, eff from and after July 1, 1979.

§ 41-7-147. Repealed.

Repealed by Laws, 1979, ch. 451, § 26, eff from and after July 1, 1979.

[Laws, 1946, ch. 363, § 15; Laws, 1958, ch. 364, § 4]

Editor's Note — Former § 41-7-147 required signatures of at least two specified officers of the commission on hospital care on all disbursements and expenditures of commission funds.

§ 41-7-149. Annual audit.

The State Auditor shall make an annual audit of the accounts and expenditures of the Mississippi Health Care Commission.

SOURCES: Codes, 1942, § 7146-14; Laws, 1946, ch. 363, § 14; Laws, 1979, ch. 451, § 21; Laws, 1985, ch. 455, § 9, eff from and after passage (approved March 29, 1985).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — State fiscal officer, generally, see §§ 7-7-1 et seq.
Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

SEC.

- 41-7-171. Short title.
- 41-7-173. Definitions.
- 41-7-175. Abolition of Health Care Commission; administration of state health planning and development agency responsibilities by State Department of Health.
- 41-7-177. Repealed.
- 41-7-178. Repealed.
- 41-7-179 and 41-7-181. Repealed.
- 41-7-183. Functions and responsibilities.
- 41-7-185. Powers.
- 41-7-187. Certificate of need program.
- 41-7-188. Certificate of need program; assessment of fees for reviewing applications; revenue from fees to be deposited in special funds for certain uses by State Department of Health.
- 41-7-189. Certificate of need program; publication of program description.
- 41-7-190. Certificate of need program; limitations on ownership of beds.
- 41-7-191. Certificate of need; activities for which certificate is required.
- 41-7-193. Certificate of need; new institutional health services and other projects.
- 41-7-195. Certificate of need; validity; transferability; duration; revocation.
- 41-7-197. Certificate of need; hearing before hearing officer; review.
- 41-7-199. Repealed.
- 41-7-201. Appeal of final order pertaining to certificate of need; home health agencies; other health-care facilities.
- 41-7-202. Stay of commission proceedings pending appeal.
- 41-7-203. Repealed.
- 41-7-205. Nonsubstantive projects; exemption from formal review.
- 41-7-207. Emergency replacement of facilities; expedited review.
- 41-7-209. Violations.

§ 41-7-171. Short title.

Sections 41-7-171 through 41-7-209 shall be known and may be cited as the "Mississippi Health Care Certificate of Need Law of 1979."

SOURCES: Laws, 1979, ch. 451, § 1; Laws, 1986, ch. 437, § 33, eff from and after July 1, 1986.

Cross References — Powers of State Department of Health with respect to §§ 41-7-171 et seq., see § 41-7-185.

ATTORNEY GENERAL OPINIONS

Sections 37-115-21 et seq. establish the University Medical Center and its teaching hospital independently of the certificate of need statutes and, therefore, the

University of Mississippi Medical Center is not subject to the certificate of need provisions. Conerely, July 14, 2000, A.G. Op. #2000-0326.

§ 41-7-173. Definitions.

For the purposes of Section 41-7-171 et seq., the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) “Affected person” means (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant’s proposal; (iii) a person who regularly uses health-care facilities or HMO’s located in the geographic area of the proposal which provide similar service to that which is proposed; (iv) health-care facilities and HMO’s which have, prior to receipt of the application under review, formally indicated an intention to provide service similar to that of the proposal being considered at a future date; (v) third-party payers who reimburse health-care facilities located in the geographical area of the proposal; or (vi) any agency that establishes rates for health-care services or HMO’s located in the geographic area of the proposal.

(b) “Certificate of need” means a written order of the State Department of Health setting forth the affirmative finding that a proposal in prescribed application form, sufficiently satisfies the plans, standards and criteria prescribed for such service or other project by Section 41-7-171 et seq., and by rules and regulations promulgated thereunder by the State Department of Health.

(c)(i) “Capital expenditure” when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Five Hundred Thousand Dollars (\$1,500,000.00).

(ii) “Capital expenditure,” when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds Two Million Dollars (\$2,000,000.00).

(iii) A “capital expenditure” shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other and are components

of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health-care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) "Change of ownership" includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of the facility or service. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included. However, "change of ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

(e) "Commencement of construction" means that all of the following have been completed with respect to a proposal or project proposing construction, renovating, remodeling or alteration:

(i) A legally binding written contract has been consummated by the proponent and a lawfully licensed contractor to construct and/or complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the State Department of Health;

(ii) Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured; and

(iii) Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent (1%) of the total cost price of the contract has been paid to the contractor by the proponent, and the requirements of this paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health-care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial

obligation as defined under applicable state law in relation to the offering of such services.

(h) "health-care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for the mentally retarded, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or instrumentality of the state, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private practice, either independently or by incorporated medical groups, of physicians, dentists or health-care professionals except where such facilities are an integral part of an institutional health service. The various health-care facilities listed in this paragraph shall be defined as follows:

(i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

(iv) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(v) "End stage renal disease (ESRD) facilities" means kidney disease treatment centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital-premises facility, regardless of whether it is provider or nonprovider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

(vi) "Intermediate care facility" means an institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or

physical condition, require health related care and services (above the level of room and board).

(vii) "Ambulatory surgical facility" means a facility primarily organized or established for the purpose of performing surgery for outpatients and is a separate identifiable legal entity from any other health-care facility. Such term does not include the offices of private physicians or dentists, whether for individual or group practice, and does not include any abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to the mentally retarded, also including, but not limited to, cerebral palsy and other conditions covered by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;
5. Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
6. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1. through 4. of this subparagraph (ix) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means either through an agency employee or by an arrangement with another individual not defined as a health-care facility.

This subparagraph (ix) shall not apply to health-care facilities which had contracts for the above services with a home health agency on January 1, 1990.

(x) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent licensed facilities which provides a twenty-four-hour program of care by qualified therapists including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric

hospital, and are in need of such restorative treatment services. For purposes of this paragraph, the term “emotionally disturbed” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(xi) “Pediatric skilled nursing facility” means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) “Long-term care hospital” means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care hospitals shall not use rehabilitation, comprehensive medical rehabilitation, medical rehabilitation, sub-acute rehabilitation, nursing home, skilled nursing facility, or sub-acute care facility in association with its name.

(xiii) “Comprehensive medical rehabilitation facility” means a hospital or hospital unit that is licensed and/or certified as a comprehensive medical rehabilitation facility which provides specialized programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities and supervised by a physician board certified or board eligible in Physiatry or other doctor of medicine or osteopathy with at least two (2) years of training in the medical direction of a comprehensive rehabilitation program that:

1. Includes evaluation and treatment of individuals with physical disabilities;
2. Emphasizes education and training of individuals with disabilities;
3. Incorporates at least the following core disciplines:
 - (i) Physical Therapy;
 - (ii) Occupational Therapy;

- (iii) Speech and Language Therapy;
- (iv) Rehabilitation Nursing; and
- 4. Incorporates at least three (3) of the following disciplines:
 - (i) Psychology;
 - (ii) Audiology;
 - (iii) Respiratory Therapy;
 - (iv) Therapeutic Recreation;
 - (v) Orthotics;
 - (vi) Prosthetics;
 - (vii) Special Education;
 - (viii) Vocational Rehabilitation;
 - (ix) Psychotherapy;
 - (x) Social Work;
 - (xi) Rehabilitation Engineering.

These specialized programs include, but are not limited to: spinal cord injury programs, head injury programs and infant and early childhood development programs.

(i) "Health maintenance organization" or "HMO" means a public or private organization organized under the laws of this state or the federal government which:

(i) Provides or otherwise makes available to enrolled participants health-care services, including substantially the following basic health-care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health-care services listed in subparagraph (i) of this paragraph to enrolled participants on a predetermined basis; and

(iii) Provides physician services primarily:

1. Directly through physicians who are either employees or partners of such organization; or

2. Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(j) "Health service area" means a geographic area of the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering certificate of need applications to provide health facilities and services.

(k) "Health services" means clinically related (i.e., diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health-care services.

(l) "Institutional health services" shall mean health services provided in or through health-care facilities and shall include the entities in or through which such services are provided.

(m) "Major medical equipment" means medical equipment designed for providing medical or any health related service which costs in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00). However, this

definition shall not be applicable to clinical laboratories if they are determined by the State Department of Health to be independent of any physician's office, hospital or other health-care facility or otherwise not so defined by federal or state law, or rules and regulations promulgated thereunder.

(n) "State Department of Health" shall mean the state agency created under Section 41-3-15, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph (t) of this section.

(o) "Offer," when used in connection with health services, means that it has been determined by the State Department of Health that the health-care facility is capable of providing specified health services.

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint stock companies and insurance companies), the state or a political subdivision or instrumentality of the state.

(q) "Provider" shall mean any person who is a provider or representative of a provider of health-care services requiring a certificate of need under Section 41-7-171 et seq., or who has any financial or indirect interest in any provider of services.

(r) "Secretary" means the Secretary of Health and Human Services, and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(s) "State Health Plan" means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health-related activities which require certificate of need review in compliance with Section 41-7-191.

(t) "State Health Planning and Development Agency" means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

SOURCES: Laws, 1979, ch. 451, § 2; Laws, 1980, ch. 493, § 1; Laws, 1981, ch. 484, § 18; Laws, 1982, ch. 482, § 1; Laws, 1983, ch. 484, § 1; Laws, 1984, ch. 472, § 2; Laws, 1985, ch. 534, § 1; Laws, 1986, ch. 437, § 34; Laws, 1987, ch. 515, § 1; Laws, 1989, ch. 530, § 1; Laws, 1990, ch. 510, § 1; Laws, 1993, ch. 609, § 9; Laws, 1994, ch. 649, § 15; Laws, 1999, ch. 583, § 1, eff from and after June 30, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (c)(ii). The words "One Million (\$1,000,000.00)" were changed to "One Million Dollars (\$1,000,000.00)". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference at the end of (h)(vii) was corrected by substituting "Section 41-75-1(f)" for "Section 41-75-1(e)."

Cross References — Duty of health care commission to administer licensure and certification of health care facilities and health maintenance organizations, see § 41-7-183.

Power of Department of Health to prepare, review and revise State Health Plan, as defined in this section, see § 41-7-185.

Limitations on extent of ownership of beds in skilled nursing facility or intermediate care facility, see § 41-7-190.

Temporary suspension of issuance of certificates of need for certain facilities defined in this section, see § 41-7-191.

Certificate of need for nursing homes, intermediate care facilities, skilled nursing facilities and certain changes of ownership of health care facilities as defined in this section, see § 41-7-191.

Certificate of need required for health care facility to establish a home office or branch within existing health care facility, see § 41-7-191.

Appeal of final order pertaining to certificate of need for health care facility, see § 41-7-201.

Stay of proceedings regarding decision pertaining to certificate of need for a home health agency, see § 41-7-202.

Applicability of the Health Care Commission Law to the licensing of hospitals, see § 41-9-11.

Issuance of a license to a home health agency upon a determination that the license application is in compliance with §§ 41-7-173 et seq., see § 41-71-7.

Definition of "hospital equipment" for purposes of the Mississippi Hospital Equipment and Facilities Authority Act, see § 41-73-5.

Requirement that ambulatory surgical facilities comply with applicable provisions of §§ 41-7-175 et seq., see 41-73-9.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Applicability of this section's definition of "person" to provisions relative to the licensing of birthing centers, see §§ 41-77-1 and 41-77-5.

Applicability of the Health Care Commission Law to the licensing of homes for the aged or infirm, see § 43-11-9.

Federal Aspects — Public Health Service Act, see 42 USCS §§ 201 et seq.

Provisions of the Federal Developmentally Disabled Assistance and Bill of Rights Act, see 42 USCS §§ 6000 et seq.

JUDICIAL DECISIONS

1. Certificate of need.

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence showed that the projected unit would have provided for a minimum number of procedures per year based on information in a

state health plan, pursuant to Miss. Code Ann. § 41-7-193(1); moreover, there was substantial evidence to show that a full range of services was available, and the Department did not base its decision on faulty financial projections. *Open MRI, LLC v. Miss. State Dep't of Health*, 939 So. 2d 813 (Miss. Ct. App. 2006).

ATTORNEY GENERAL OPINIONS

Offices of private physicians and dentists are excluded from definition of am-

bulatory surgical facility by Section 41-7-173(h)(vii) and ambulatory surgical

services provided in such offices are not institutional health services. Thompson, March 22, 1994, A.G. Op. #93-0924.

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. Thompson, March 22, 1994, A.G. Op. #93-0924.

An office that is a large, all encompassing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. Thompson, January 9, 1996, A.G. Op. #95-0802.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care

beds and only the Medicare reimbursement schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer a new health service which was not previously offered by the hospital. Thompson, July 2, 1999, A.G. Op. #99-0309.

A board of trustees of a community hospital may acquire a building and related equipment from a physician with the permission of the owner of the community hospital and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease the building and equipment to a physician. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

RESEARCH REFERENCES

ALR. Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

§ 41-7-175. Abolition of Health Care Commission; administration of state health planning and development agency responsibilities by State Department of Health.

The State Department of Health shall be the sole and official agency of the State of Mississippi to administer and supervise, as prescribed by the Legislature, all responsibilities of the state health planning and development agency.

SOURCES: Laws, 1979, ch. 451, § 3; Laws, 1983, ch. 484, § 2; Laws, 1986, ch. 437, § 35; Laws, 1987, ch. 515, § 2, eff from and after July 1, 1987.

Cross References — Other provisions pertaining to Health Care Commission, see §§ 41-7-140, 41-7-149, 41-9-3, 41-9-13.

Functions and responsibilities of Health Care Commission, see § 41-7-183.

Powers of Health Care Commission, see § 41-7-185.

Powers and duties of the commission with respect to home health agencies, see §§ 41-71-1 et seq.

Federal Aspects — Public Health Service Act, see 42 USCS §§ 201 et seq.

§ 41-7-177. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Laws, 1979, ch. 451, § 4; Laws, 1980, ch. 560, § 17; Laws, 1984, ch. 488, § 309; Laws, 1985, ch. 534, § 2]

Editor's Note — Former § 41-7-177 provided for the appointment of members of the health care commission, and meetings of commission, and restricted participation by interested members.

§ 41-7-178. Repealed.

Repealed by Laws, 1989, ch. 530, § 5, eff from and after July 1, 1989.

[Laws, 1984, ch. 488, § 310]

Editor's Note — Former § 41-7-178 provided for the designation of persons to attend meetings of the Health Care Commission in a nonvoting capacity.

§§ 41-7-179 and 41-7-181. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

§ 41-7-179. [Laws, 1979, ch. 451, § 5(1); Laws, 1980, ch. 493, § 2; Laws, 1983, ch. 536, § 6; Laws, 1985, ch. 534, § 3]

§ 41-7-181. [Laws, 1979, ch. 451, § 5(2)]

Editor's Note — Former § 41-7-179 provided for a director of the Health Care Commission, and specified his powers and duties.

Former § 41-7-181 provided for the transfer of employees to the Health Care Commission.

§ 41-7-183. Functions and responsibilities.

The State Department of Health shall have the duty of administering all functions and responsibilities of the designated state health planning and development agency as prescribed by the Legislature, and shall serve as the designated planning agency of the state for purposes of Section 1122 of Public Law 92-603 for the period of time that a contract is in effect between the Secretary and the State Department of Health for such purposes.

SOURCES: Laws, 1979, ch. 451, § 6; Laws, 1980, ch. 493, § 3; Laws, 1981, ch. 484, § 12; Laws, 1983, ch. 484, § 3; Laws, 1985, ch. 534, § 4; Laws, 1986, ch. 437, § 36; Laws, 1987, ch. 515, § 3, eff from and after July 1, 1987.

Cross References — Other functions of Health Care Commission, see §§ 41-9-1, 41-9-3, 41-9-7 through 41-9-23, 41-9-29 through 41-9-35.

Responsibility of commission to provide continuing education program for hospital trustees, see § 41-7-140.

§ 41-7-185. Powers.

In carrying out its functions under Section 41-7-171, et seq., the State Department of Health is hereby empowered to:

(a) Make applications for and accept funds from the secretary and other federal and state agencies and to receive and administer such other funds for the planning or provision of health facilities or health care as are appropriate to the accomplishment of the purposes of Section 41-7-171, et seq.; and to contract with the secretary to accept funds to administer planning activities on the community, regional or state level;

(b) With the approval of the secretary, delegate to or contract with any mutually agreeable department, division or agency of the state, the federal government, or any political subdivision of either, or any private corporation, organization or association chartered by the Secretary of State of Mississippi, authority for administering any programs, duties or functions provided for in Section 41-7-171, et seq.;

(c) Prescribe and promulgate such reasonable rules and regulations as may be necessary to the implementation of the purposes of Section 41-7-171, et seq., complying with Section 25-43-1, et seq.;

(d) Require providers of institutional health services and home health-care services provided through a home health agency and any other provider of health care requiring a certificate of need to submit or make available statistical information or such other information requested by the State Department of Health, but not information that would constitute an unwarranted invasion of the personal privacy of any individual person or place the provider in jeopardy of legal action by a third party;

(e) Conduct such other hearing or hearings in addition to those provided for in Section 41-7-197, and enter such further order or orders, and with approval of the Governor enter into such agreement or agreements with the secretary as may be reasonably necessary to the realization by the people of Mississippi of the full benefits of Acts of Congress;

(f) In its discretion, contract with the secretary, or terminate any such contract, for the administration of the provisions, programs, duties and functions of Section 1122 of Public Law 92-603; but the State Department of Health shall not be relieved of matters of accountability, obligation or responsibility that accrued to the department by virtue of prior contracts and/or statutes;

(g) Prepare, review at least triennially, and revise, as necessary, a State Health Plan, as defined in Section 41-7-173, which shall be approved by the Governor before it becomes effective.

SOURCES: Laws, 1979, ch. 451, § 7; Laws, 1980, ch. 493, § 4; Laws, 1981, ch. 484, § 13; Laws, 1983, ch. 484, § 4; Laws, 1985, ch. 534, § 5; Laws, 1986, ch. 437, § 37; Laws, 1987, ch. 515, § 4; Laws, 1989, ch. 530, § 3, eff from and after July 1, 1989.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Laws of 1989, ch. 530, § 4, effective from and after July 1, 1989, provides as follows: "SECTION 4. The State Department of Health shall conduct an in-depth study of the public health districts in the State of Mississippi and restructure these districts as is necessary to more accurately reflect the health care needs of the state, taking into account

current population, demographics, trade centers, residential centers and communities of interest. The State Board of Health shall make a report on the restructure of said public health districts to the 1990 Regular Session of the Legislature.”

Cross References — Statewide health coordinating council, see § 41-7-173.

Retention of liability on delegation of certain duties, see § 41-7-197.

Licenses which may be issued by commission to insure safe, sanitary, and reasonably adequate care and treatment of individuals in hospitals, see §§ 41-9-1, 41-9-3, 41-9-7 through 41-9-23, 41-9-29 through 41-9-35.

Use of statistical data compiled pursuant to §§ 41-7-171 et seq., see §§ 41-9-23, 41-71-19.

ATTORNEY GENERAL OPINIONS

The Governor does not have authority to amend the State Health Plan, as opposed to simply approving or disapproving it. Thompson, June 10, 1999, A.G. Op. #99-0275.

§ 41-7-187. Certificate of need program.

The State Department of Health is hereby authorized to develop and implement a statewide health certificate of need program. The State Department of Health is authorized and empowered to adopt by rule and regulation:

(a) Criteria, standards and plans to be used in evaluating applications for certificates of need;

(b) Effective standards to determine when a person, facility or organization must apply for a certificate of need;

(c) Standards to determine when a change of ownership has occurred or will occur; and

(d) Review procedures for conducting reviews of applications for certificates of need.

SOURCES: Laws, 1979, ch. 451, § 8; Laws, 1986, ch. 437, § 38; Laws, 1987, ch. 515, § 5, eff from and after July 1, 1987.

Editor’s Note — Laws of 2006, ch. 513, § 2 provides as follows:

“SECTION 2. The State Board of Health shall, not later than October 15, 2006, develop and make a report to the Chairmen of the Public Health and Welfare Committees of the Senate and House of Representatives, the Lieutenant Governor, the Speaker of the House of Representatives and the Governor, including any recommended legislation, on the following policies and procedures relating to the State Health Plan and the Health Care Facility Certificate of Need Law:

“(a) Review the procedures under which health care facility certificates of need are requested and issued or denied. Make reasonable recommendations (i) to reduce the time periods required for certificate of need review and appeal the refromwithout compromising the fairness of the decision; (ii) to exempt additional nonsubstantive transactions by health care facilities from the certificate of need requirement; and (iii) to authorize additional transactions by health care facilities which may receive an expedited review.

“(b) Verify the fairness of how the annual State Health Plan considers changing population projections and how residents choose health care services.

“(c) Verify the fairness of how the annual State Health Plan considers that residents travel to neighboring states to receive health care services.

“(d) Verify the fairness of the different planning districts applicable to each type of health care certificate of need activity by a facility. For example, General Hospital Service Areas compared to Long-Term Care Planning Districts, compared to Ambulatory Surgical Planning Areas, compared to Home Health Agency Planning Areas, compared to Perinatal Planning Areas, compared to Adolescent and Adult Psychiatric Facility Planning Areas, etc.

“(e) Verify the fairness and appropriateness of the formulas used to determine the need for health care services under the certificate of need law.

“(f) Review the existence of licensed beds listed in the Directory of Licensed Health Care Facilities which are unused and available for transfer to another facility or location under the certificate of need process, and the effect of these unused beds on the State Health Plan.”

JUDICIAL DECISIONS

1. In general.

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative analysis of both applications and determined successful application to be superior. *Cain v. Mississippi State Dep't of Health*, 666 So. 2d 506 (Miss. 1995).

Mississippi State Department of Health has authority to develop and establish criteria for granting certificates of need for construction of nursing homes and to objectively review information submitted in applications. *Cain v. Mississippi State*

Dep't of Health, 666 So. 2d 506 (Miss. 1995).

Read together, §§ 41-7-187 and 41-7-189(2) authorize the Department of Health both to establish criteria for certificates of need and to review objectively information tendered in applications. The Department's power is limited only in that its action may not be arbitrary and capricious. *Mississippi State Dep't of Health v. Southwest Miss. Regional Medical Ctr.*, 580 So. 2d 1238 (Miss. 1991).

The State Health Officer did not act arbitrarily and capriciously when he denied an applicant's request for a certificate of need to offer cardiac catheterization services merely because he measured the population criteria using patient origin reports; while this method of population analysis may be imperfect, it does not approach an arbitrary or capricious action. *Mississippi State Dep't of Health v. Southwest Miss. Regional Medical Ctr.*, 580 So. 2d 1238 (Miss. 1991).

ATTORNEY GENERAL OPINIONS

Legislation (Laws, 1982, ch. 482, § 9) which was never codified and which limits the fee for certificates of need applications

is valid and binding upon the Department of Health. *Amy*, Sept. 8, 2006, A.G. Op. 06-0385.

§ 41-7-188. Certificate of need program; assessment of fees for reviewing applications; revenue from fees to be deposited in special funds for certain uses by State Department of Health.

(1) The State Department of Health is hereby authorized and empowered to assess fees for reviewing applications for certificates of need. The State

Department of Health shall promulgate such rules and regulations as are necessary to effectuate the intent of this section in keeping with the standards hereinbelow:

(a) The fees assessed shall be uniform to all applicants.

(b) The fees assessed shall be nonrefundable.

(c) The fee shall be .5 of 1% of the amount of a proposed capital expenditure.

(d) The minimum fee shall not be less than Five Hundred Dollars (\$500.00) regardless of the amount of the proposed capital expenditure, and the maximum fee permitted shall not exceed Twenty-five Thousand Dollars (\$25,000.00), regardless of category.

(e) No application shall be deemed complete for the review process until such required fee is received by the State Department of Health.

(f) The required fee shall be paid to the State Department of Health and may be paid by check, draft or money order.

(g) There shall be no filing fee requirement for any application submitted by an agency, department, institution or facility which is operated, owned by and/or controlled by the State of Mississippi and which received operating and/or capital expenditure funds solely by appropriations from the Legislature of the State.

(h) There shall be no filing fee requirement for any health-care facility submitting an application for repairs or renovations determined by the State Department of Health in writing, to be necessary in order to avoid revocation of license and/or loss of certification for participation in the Medicaid and/or Medicare programs. Any proposed expenditure in excess of the amount determined by the State Department of Health to be necessary to accomplish the stated purposes shall be subject to the fee requirements of this section.

(2) The revenue derived from the fees imposed in subsection (1) of this section shall be deposited by the State Department of Health in a special fund, hereby created in the State Treasury, which is earmarked for use by the State Department of Health in conducting its health planning and certificate of need review activities. It is the intent of the Legislature that the health planning and certificate of need programs be continued for the protection of the individuals within the state requiring health care.

(3) The State Department of Health is authorized and empowered to assess fees for reviewing applications for certificates of authority for health maintenance organizations and for the issuance and renewal of such certificates of authority. The fees assessed shall be uniform to all applicants and to all holders of certificates of authority, and shall be nonrefundable. The fees for applications, original certificates of authority and renewals of certificates of authority shall not exceed Five Thousand Dollars (\$5,000.00) each. The revenues derived from the fees assessed under this subsection shall be deposited by the department in a special fund hereby created in the State Treasury, which is earmarked for the use of the department in its regulation of the operation of health maintenance organizations.

SOURCES: Laws, 1982, ch. 482, § 9; Laws, 1984, ch. 306; 1986, ch. 437, § 50; Laws, 1986, ch. 500, § 33; Laws, 1987, ch. 515, § 10 effective from and after July 1, 1987.

Editor's Note — This section was codified at the direction of the Co-Counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-7-189. Certificate of need program; publication of program description.

(1) Prior to review of new institutional health services or other proposals requiring a certificate of need, the State Department of Health shall disseminate to all health-care facilities and health maintenance organizations within the state, and shall publish in one or more newspapers of general circulation in the state, a description of the scope of coverage of the commission's certificate of need program. Whenever the scope of such coverage is revised, the State Department of Health shall disseminate and publish a revised description thereof in like manner.

(2) Selected statistical data and information obtained by the State Department of Health as the licensing agency for health-care facilities requiring licensure by the state and as the agency which provides certification for the Medicaid and/or Medicare program, may be utilized by the department in performing the statutory duties imposed upon it by any law over which it has authority, and regulations necessarily promulgated for such facilities to participate in the Medicaid and/or Medicare program; provided, however, that the names of individual patients shall not be revealed except in hearings or judicial proceedings regarding questions of licensure.

SOURCES: Laws, 1979, ch. 451, § 10; Laws, 1982, ch. 482, § 2; Laws, 1985, ch. 534, § 6; Laws, 1986, ch. 437, § 39, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

JUDICIAL DECISIONS

1. In general.

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative

analysis of both applications and determined successful application to be superior. *Cain v. Mississippi State Dep't of Health*, 666 So. 2d 506 (Miss. 1995).

Mississippi State Department of Health has authority to develop and establish criteria for granting certificates of need for construction of nursing homes and to objectively review information submitted in applications. *Cain v. Mississippi State Dep't of Health*, 666 So. 2d 506 (Miss. 1995).

Read together, §§ 41-7-187 and 41-7-189(2) authorize the Department of

Health both to establish criteria for certificates of need and to review objectively information tendered in applications. The Department's power is limited only in that its action may not be arbitrary and capricious. *Mississippi State Dep't of Health v. Southwest Miss. Regional Medical Ctr.*, 580 So. 2d 1238 (Miss. 1991).

The State Health Officer did not act arbitrarily and capriciously when he de-

nied an applicant's request for a certificate of need to offer cardiac catheterization services merely because he measured the population criteria using patient origin reports; while this method of population analysis may be imperfect, it does not approach an arbitrary or capricious action. *Mississippi State Dep't of Health v. Southwest Miss. Regional Medical Ctr.*, 580 So. 2d 1238 (Miss. 1991).

§ 41-7-190. Certificate of need program; limitations on ownership of beds.

No corporation, foreign or domestic, partnership, individual(s) or association of such entities or of persons whatsoever, or any combination thereof, shall own, possess or exercise control over, in any manner, more than twenty percent (20%) of the beds in health-care facilities defined in Section 41-7-173(h)(iv) and (vi) in the defined health service area of the State of Mississippi.

Health-care facilities owned, operated or under control of the United States government, the state government or political subdivision of either are excluded from the limitation of this section.

SOURCES: Laws, 1984, ch. 492, § 1; Laws, 1985, ch. 534, § 7, eff from and after July 1, 1985.

Editor's Note — Laws of 1986, ch. 437, §§ 1, 2, eff from and after July 1, 1986, provide as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Health Services Reorganization Act of 1986.

"SECTION 2. All records, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this act shall be transferred to the appropriate agency according to the merger of their functions under this act."

For a list of Code sections affected by Laws of 1986, Chapter 437, see the Statutory Tables Volume (2002), Table B.

Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health-care facility, which establishment shall include the reopening of a health-care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health-care facility or portion thereof, or major medical equipment, unless such relocation of a health-care facility or portion

thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health-care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health-care facility;

(c) Any change in the existing bed complement of any health-care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health-care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health-care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health-care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department of Health shall survey the health-care facility within thirty (30) days of that notice and, if appropriate, issue the health-care facility a new license reflecting the new contingent of beds. However, in no event may a health-care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

- (i) Open heart surgery services;
- (ii) Cardiac catheterization services;
- (iii) Comprehensive inpatient rehabilitation services;
- (iv) Licensed psychiatric services;
- (v) Licensed chemical dependency services;
- (vi) Radiation therapy services;
- (vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;
- (viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
- (ix) Home health services;
- (x) Swing-bed services;
- (xi) Ambulatory surgical services;
- (xii) Magnetic resonance imaging services;
- (xiii) [Deleted]
- (xiv) Long-term care hospital services;
- (xv) Positron Emission Tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation,

which does not involve a capital expenditure by or on behalf of a health-care facility, (i) is to a physical facility or site within five thousand two hundred eighty (5,280) feet from the main entrance of the health-care facility where the health-care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; provided, however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health-care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health-care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health-care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health-care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health-care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health-care facility through a formal arrangement with an existing health-care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(l) The replacement or relocation of a health-care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health-care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health-care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health-care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health-care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health-care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the

certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is

transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that

is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(l) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator-dependent patients. The provisions of Section 41-7-193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are hereby waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1,

2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the

certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are

participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning

Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the

four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop

and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing

basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health-care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately-owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of any patients other than those who are participating only in the Medicaid

program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty (30) psychiatric residential treatment facility beds, in either Alcorn,

Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately-owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health-care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital,

psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph (i) and in the written agreement by the recipient of the certificate of need.

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph

shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the

State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h)(xii) in Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the

certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are hereby waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept. Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health-care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than

twenty (20) beds in a community living program for developmentally disabled adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home office, subunit or branch office within the space operated as a health-care facility as defined in Section 41-7-173(h)(i) through (viii) by a health-care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health-care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health-care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health-care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health-care facility which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) The new construction of a nursing facility or nursing facility beds or the conversion of other beds to nursing facility beds shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary, if the conditions of this subsection are met.

(a) Before any construction or conversion may be undertaken without a certificate of need, the owner of the nursing facility, in the case of an existing facility, or the applicant to construct a nursing facility, in the case of new

construction, first must file a written notice of intent and sign a written agreement with the State Department of Health that the entire nursing facility will not at any time participate in or have any beds certified for participation in the Medicaid program (Section 43-13-101 et seq.), will not admit or keep any patients in the nursing facility who are participating in the Medicaid program, and will not submit any claim for Medicaid reimbursement for any patient in the facility. This written agreement by the owner or applicant shall be a condition of exercising the authority under this subsection without a certificate of need, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the facility is transferred at any time after the agreement is signed. After the written agreement is signed, the Division of Medicaid and the State Department of Health shall not certify any beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by participating in the Medicaid program, having any beds certified for participation in the Medicaid program, admitting or keeping any patient in the facility who is participating in the Medicaid program, or submitting any claim for Medicaid reimbursement for any patient in the facility, the State Department of Health shall revoke the license of the nursing facility at the time that the department determines, after a hearing complying with due process, that the facility has violated the terms of the written agreement.

(b) For the purposes of this subsection, participation in the Medicaid program by a nursing facility includes Medicaid reimbursement of coinsurance and deductibles for recipients who are qualified Medicare beneficiaries and/or those who are dually eligible. Any nursing facility exercising the authority under this subsection may not bill or submit a claim to the Division of Medicaid for services to qualified Medicare beneficiaries and/or those who are dually eligible.

(c) The new construction of a nursing facility or nursing facility beds or the conversion of other beds to nursing facility beds described in this section must be either a part of a completely new continuing care retirement community, as described in the latest edition of the Mississippi State Health Plan, or an addition to existing personal care and independent living components, and so that the completed project will be a continuing care retirement community, containing (i) independent living accommodations, (ii) personal care beds, and (iii) the nursing home facility beds. The three (3) components must be located on a single site and be operated as one (1) inseparable facility. The nursing facility component must contain a minimum of thirty (30) beds. Any nursing facility beds authorized by this section will not be counted against the bed need set forth in the State Health Plan, as identified in Section 41-7-171 et seq.

This subsection (13) shall stand repealed from and after July 1, 2005.

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having

a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health-care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and the health-care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health-care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health-care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds ($\frac{2}{3}$) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health-care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third ($\frac{1}{3}$) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the "John C. Stennis Memorial Hospital." In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid

program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.

SOURCES: Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21, eff from and after June 30, 2007.

Joint Legislative Committee Note — Section 1 of ch. 303, Laws of 1999, effective from and after passage (approved March 1, 1999), amended this section. Section 2 of ch. 495, Laws of 1999, effective July 1, 1999, also amended this section. Finally, this section was amended by Section 2 of ch. 583, Laws of 1999, effective from and after June 30, 1999. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the April 28, 1999, meeting of the Committee.

Section 1 of ch. 342, Laws of 2001, effective from and after June 30, 2001, amended this section. Section 1 of ch. 607, Laws of 2001, effective from and after July 1, 2001, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 607, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in (1)(l), (2)(n) and (2)(o) have been corrected by substituting "subsection (1) of this section" for "this Section 41-7-191(l)" in (1)(l), "within eighteen (18) months after July 1, 1998" for "within eighteen months after the effective date of July 1, 1998" in (2)(n), and "within eighteen (18) months after July 1, 2001" for "within eighteen (18) months after the effective date of July 1, 2001" in (2)(o).

Laws of 1995, ch. 599, § 2, provides as follows:

"SECTION 2. All new programs authorized in Section 1 of this act are subject to the availability of funds specifically appropriated therefor by the Legislature."

Laws of 2002, ch. 636B, was Senate Bill 2189, 2002 Regular Session, and originally passed the House of Representatives and the Senate on April 2, 2002. The Governor vetoed Senate Bill 2189 on April 9, 2002. The veto was overridden by both the House of Representatives and the Senate on April 12, 2002.

Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment added (17) and redesignated former (17) as present (18).

Cross References — Mississippi State Veterans Home, see § 35-1-19 et seq. Ellisville State School, see §§ 41-7-73, 41-19-103 through 41-19-121.

Definition of “capital expenditure” for purposes of §§ 41-7-171 et seq., see § 41-7-173.

Power of health care commission to conduct hearings in addition to those authorized by this section, see § 41-7-185.

Projects which are deemed nonsubstantive for purposes of review by the Department, see § 41-7-205.

Critical access hospitals authorized to bank licensed hospital acute care beds, see § 41-9-210.

Federal Aspects — Provisions of Title XVIII of Social Security Act, see 42 USCS §§ 1395 et seq.

Provisions of Title XIX of Social Security Act, see 42 USCS §§ 1396 et seq.

JUDICIAL DECISIONS

1. In general.
2. Addition of beds.
3. Certificate of need granted.

1. In general.

Mississippi Supreme Court finds no ambiguity in the language of Miss. Code Ann. § 41-7-191(16), as without listing a single exception or qualification, it clearly mandates the Mississippi State Department of Health to issue a certificate of need; therefore, it was proper to grant an application that was filed by the parties delineated in § 41-7-191(16). *Oktibbeha County Hosp. v. Miss. State Dep't of Health*, 956 So. 2d 207 (Miss. 2007).

Upon passing Miss. Code Ann. § 41-7-191(16), the Mississippi legislature effectively waived all certificate of need (CON) requirements as they relate to any endeavor entered into between Mississippi State University and any public or private health care provider in the acquisition of a linear accelerator and a magnetic resonance imaging unit; therefore, a hospital challenging the decision to grant a CON to the parties delineated in § 41-7-191 did not need a hearing. *Oktibbeha County Hosp. v. Miss. State Dep't of Health*, 956 So. 2d 207 (Miss. 2007).

Supposed “notice” to a special assistant attorney general is not sufficient under Miss. R. Civ. P. 24(d) or Miss. R. App. P. 44; therefore, a hospital was procedurally

barred from bringing constitutional challenges to Miss. Code Ann. § 41-7-191(16) under Miss. Const. art. 4, § 87, Miss. Const. art. 3, § 14, and the Fourteenth Amendment where there was no notice to the Mississippi Attorney General. *Oktibbeha County Hosp. v. Miss. State Dep't of Health*, 956 So. 2d 207 (Miss. 2007).

An existing nursing home was eligible for a certificate of need for additional beds notwithstanding that it had already been issued a certificate of need for 60 beds, only 30 of which were to be Medicaid-eligible, as the statutory provision which allowed the original certificate of need did not prohibit the issuance of a later certificate of need for additional beds; further, the certificate of need was properly granted to the existing nursing home as such grant was more cost-effective, based in large part upon the fact that it involved an addition to an existing facility as opposed to the construction of a new facility. *Cain v. Mississippi State Dep't of Health*, 767 So. 2d 207 (Miss. 2000).

There is nothing in statute or case law which indicates that a lessened standard of need applies to determine if a “relocation” should be approved. *St. Dominic-Jackson Mem. Hosp. v. Mississippi State Dep't of Health*, 728 So. 2d 81 (Miss. 1998).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract

with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. *Martin v. Memorial Hosp.*, 86 F.3d 1391 (5th Cir. 1996).

Decision of Mississippi State Department of Health to disapprove unsuccessful applicant's application for certificate of need for construction of 60-bed nursing home and to approve competing application was supported by substantial evidence and was neither arbitrary nor capricious, despite contention that unsuccessful application reflected lower expenditures and costs; by state law, Department could grant only one of competing applications in county, and State Health Officer conducted comparative analysis of both applications and determined successful application to be superior. *Cain v. Mississippi State Dep't of Health*, 666 So. 2d 506 (Miss. 1995).

Nothing in § 41-7-191 prohibits a provider domiciled in one county from apply-

ing for a receiving a certificate of need to offer a health care service in another county. *City of Durant v. Humphreys County Mem. Hosp./Extended Care Facility*, 587 So. 2d 244 (Miss. 1991).

2. Addition of beds.

When hospital system's proposal to relocate 60 beds from one hospital to another was actually a request to add 60 beds, a certificate of need should not have been granted because the hospital system admitted that it could not meet the criterion that should have been applied, which pertained to the addition of beds. *Singing River Hosp. Sys. v. Biloxi Reg'l Med. Ctr.*, 928 So. 2d 810 (Miss. 2006).

3. Certificate of need granted.

Mississippi State Department of Health (MSDH) did not err in granting a certificate of need (CON) to a company for the provision of mobile magnetic resonance imaging (MRI) services because, even though a customer terminated its service agreement with the MRI company while the CON application was pending, substantial evidence supported the MSDH's determination that the MRI company would still be able to perform enough procedures for its remaining customers to meet the annual requirements of the state health plan. *Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc.*, 984 So. 2d 967 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Offices of private physicians and dentists in which ambulatory surgical services are provided are not health care facilities and are therefore not subject to certificate of need review. *Thompson*, March 22, 1994, A.G. Op. #93-0924.

An office that is a large, all encompassing, multi-speciality ambulatory surgical facility, is not a private office as intended by the Section 41-7-173. Moreover, a facility is a health care facility inasmuch as it would provide institutional health services. Accordingly, such a facility would not be exempt from the certificate of need requirements set forth in section 41-7-191(1)(d)(xi), despite the fact that it is owned by a physicians' group. *Thompson*, January 9, 1996, A.G. Op. #95-0802.

The establishment of and certification of a peritoneal dialysis facility for Medicare purposes by the Mississippi State Department of Health is the establishment of a health care facility and, as such, requires a certificate of need under the Certificate of Need Law of 1979. *Thompson*, February 9, 1999, A.G. Op. #99-0808.

The establishment of a Distinct Part, PPS-excluded acute rehabilitation unit in an existing hospital, without the addition of any licensed beds and when the beds at issue will remain licensed as acute care beds and only the Medicare reimbursement schedule will change, is a project that requires certificate of need review and approval if the unit is either (1) a new health care facility, or (2) proposes to offer

a new health service which was not previously offered by the hospital. Thompson, July 2, 1999, A.G. Op. #99-0309.

Subsection (2)(q)(vi) is properly interpreted by the Department of Health to be essentially a “tie-breaker” between two equally qualified applications. Brand, June 14, 2002, A.G. Op. #02-0302.

The 2004 amendment to 41-7-191(16) is clearly a mandate to the department of health to grant the necessary certification of need (CON), without requiring the applicant to demonstrate compliance with any CON criteria or specifications. Amy, Sept. 16, 2005, A.G. Op. 05-0452.

The 2006 amendment of Section 41-7-191 plainly requires a certificate of need for the reopening of any health care facility after it has been closed for more than 60 months. Amy, July 10, 2006, A.G. Op. 06-0261.

Since the legislature did not define the term, it is within the Department of Health’s discretion and authority to determine and set by regulation what constitutes the “reopening” and “operation” of a health care facility for purposes of Section 41-7-191 — whether it means actually housing patients/residents, or something short of this. Amy, July 10, 2006, A.G. Op. 06-0261.

Vendors who, in good faith, provided goods or services, in situations when through no fault of the vendor, the governing authorities made an error in the manner the purchasing laws were followed, are authorized by Section 31-7-57 to bring an original cause of action, as the claim is based on a contractual obligation. It would not be appropriately handled as an appeal pursuant to Section 21-39-11. Dye, July 10, 2006, A.G. Op. 06-0267.

§ 41-7-193. Certificate of need; new institutional health services and other projects.

(1) No person may enter into any financing arrangement or commitment for financing a new institutional health service or any other project requiring a certificate of need unless such certificate has been granted for such purpose. A certificate of need shall not be granted or issued to any person for any proposal, cause or reason, unless the proposal has been reviewed for consistency with the specifications and the criteria established by the State Department of Health and substantially complies with the projection of need as reported in the state health plan in effect at the time the application for the proposal was submitted.

(2) An application for a certificate of need for an institutional health service, medical equipment or any proposal requiring a certificate of need shall specify the time, within that granted, such shall be functional or operational according to a time schedule submitted with the application. Each certificate of need shall specify the maximum amount of capital expenditure that may be obligated. The State Department of Health shall periodically review the progress and time schedule of any person issued or granted a certificate of need for any purpose.

SOURCES: Laws, 1979, ch. 451, § 12; Laws, 1980, ch. 493, § 6; Laws, 1982, ch. 482, § 3; Laws, 1983, ch. 484, § 6; Laws, 1985, ch. 534, § 9; Laws, 1986, ch. 437, § 41; Laws, 1993, ch. 467, § 1, eff from and after passage (approved March 29, 1993).

Editor’s Note — Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

Cross References — Waiver of provisions of this section for purposes of certificate of need for certain facilities in certain counties, see § 41-7-191.

JUDICIAL DECISIONS

1. In general.

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence showed that the projected unit would have provided for a minimum number of procedures per year based on information in a state health plan, pursuant to Miss. Code Ann. § 41-7-193(1). *Open MRI, LLC v. Miss. State Dep't of Health*, 939 So. 2d 813 (Miss. Ct. App. 2006).

In its determination of a Certificate of Need, the proposal had to be consistent with the specifications and criteria established by the Department of Health and in substantial compliance with the Mississippi State Health Plan. *Jeff Anderson Reg'l Med. Ctr. v. Mississippi State Dep't of Health*, 798 So. 2d 1264 (Miss. 2001).

A showing of substantial evidence of need is required in order for an applicant to secure a certificate of need for any health care proposal to which the certificate of need laws apply; what defines need in any given case depends upon the purpose behind the enactment of the certifi-

cate of need laws, particular statutory provisions, and a consideration of the Department of Health's stated general review criteria. *Mississippi State Dep't of Health v. Mississippi Baptist Medical Ctr.*, 663 So. 2d 563 (Miss. 1995).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department of Health to determine what portion of the service area's population the applicant is likely to serve. *Mississippi State Dep't of Health v. Golden Triangle Regional Medical Ctr.*, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. *HTI Health Servs., Inc. v. Mississippi State Dep't of Health*, 603 So. 2d 848 (Miss. 1992).

§ 41-7-195. Certificate of need; validity; transferability; duration; revocation.

(1) A certificate of need shall be valid only for the defined scope, physical location and person named in the application. A certificate of need shall not be transferable or assignable nor shall a project or capital expenditure project be transferred from one person to another, except with the approval of the State Department of Health. A certificate of need shall be valid for the period of time specified therein.

(2) A certificate of need shall be issued for a period of twelve (12) months, or such other lesser period as specified by the State Department of Health.

(3) The State Department of Health may define by regulation, not to exceed six (6) months, the time for which a certificate of need may be extended.

(4) If commencement of construction or other preparation is not substantially undertaken during a valid certificate of need period or the State Department of Health determines the applicant is not making a good faith effort to obligate such approved expenditure, the State Department of Health shall have the right to withdraw, revoke or rescind the certificate.

(5) The State Department of Health may approve or disapprove a proposal for a certificate of need as originally presented in final form, or it may approve a certificate of need by a modification, by reduction only, of such proposal provided the proponent agrees to such modification.

SOURCES: Laws, 1979, ch. 451, § 13; Laws, 1980, ch. 493, § 7; Laws, 1982, ch. 482, § 4; Laws, 1986, ch. 437, § 42, eff from and after July 1, 1986.

§ 41-7-197. Certificate of need; hearing before hearing officer; review.

(1) The State Department of Health shall adopt and utilize procedures for conducting certificate of need reviews. Such procedures shall include, inter alia, the following: (a) written notification to the applicant; (b) written notification to health-care facilities in the same health service area as the proposed service; (c) written notification to other persons who prior to the receipt of the application have filed a formal notice of intent to provide the proposed services in the same service area; and (d) notification to members of the public who reside in the service area where the service is proposed, which may be provided through newspapers or public information channels.

(2) All notices provided shall include, inter alia, the following: (a) the proposed schedule for the review; (b) written notification of the period within which a public hearing during the course of the review may be requested in writing by one or more affected persons, such request to be made within twenty (20) days of said notification; and (c) the manner in which notification will be provided of the time and place of any hearing so requested. Any such hearing shall be conducted by a hearing officer designated by the State Department of Health. At such hearing, the hearing officer and any person affected by the proposal being reviewed may conduct reasonable questioning of persons who make relevant factual allegations concerning the proposal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced by any interested person, the staff report and recommendation and such other material as the hearing officer considers relevant, including his own recommendation, which he shall make within a reasonable period of time after the hearing is closed and after he has had an opportunity to review, study and analyze the evidence presented during the hearing. The completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision, and shall not consider any evidence or material which is not included therein. All final decisions regarding the issuance of a certificate of need shall be made by the State Health Officer. The State Health Officer shall make his written findings and issue his order after reviewing said record. The findings and decision of the State Health Officer shall not be deferred to any later date, and any deferral shall result in an automatic order of disapproval.

(3) If review by the State Department of Health concerning the issuance of a certificate of need is not complete within the time specified by rule or regulation, which shall not, to the extent practicable, exceed ninety (90) days, the certificate of need shall not be granted. The proponent of the proposal may, within thirty (30) days, after the expiration of the specified time for review, commence such legal action as is necessary, in the Chancery Court of the First Judicial District of Hinds County or in the chancery court of the county in which the new institutional health service is proposed to be provided, to compel the State Health Officer to issue written findings and written order approving or disapproving the proposal in question.

SOURCES: Laws, 1979, ch. 451, § 14; Laws, 1980, ch. 493, § 8; Laws, 1982, ch. 482, § 5; Laws, 1983, ch. 484, § 7; Laws, 1984, ch. 492, § 2; Laws, 1985, ch. 534, § 10; Laws, 1986, ch. 437, § 43; Laws, 1988, ch. 421, § 2; Laws, 1993, ch. 467, § 2, *eff from and after passage* (approved March 29, 1993).

Editor's Note — Laws of 1982, ch. 482, § 8, as amended by Laws of 1983, ch. 484, § 10, as amended by Laws of 1986, ch. 437, § 49, as amended by Laws of 1986, ch. 500, § 32, provides as follows:

“SECTION 8. In the event Part 123 of Title 42 of the Code of Federal Regulations (CFR) which pertains to the United States Public Service Act is amended so as to permit states to impose fees or assess costs to those defined persons, permitted to and requesting hearings during the course of a review as provided for in Section 41-7-197(1), the commission, or its successor, may, by its rulemaking authority, impose or assess such fees and/or costs as determined to be reasonable by the Secretary upon such persons requesting the herein stated hearings, payable to the commission, or its successor, prior to any such hearing. Such charges, fees and/or costs must be applicable to all persons requesting these hearings and uniform in all cases.”

Cross References — Conduct of hearings other than those provided for in this section by the State Department of Health in carrying out its functions under the Health Care Certificate of Need Law of 1979, see § 41-7-185.

Waiver of provisions of this section for purposes of certificate of need for construction of the John C. Stennis Memorial Hospital, see § 41-7-191.

Federal Aspects — Provisions of the United States Public [Health] Service Act, see 42 USCS §§ 201 et seq.

JUDICIAL DECISIONS

1. In general.
2. Due process.

1. In general.

Mississippi State Department of Health properly allowed an applicant to submit additional information for a certificate of need since it extended the application to the next review period, and the objectors' right to a public hearing under Miss. Code Ann. § 41-7-197(2) was satisfied; even if the Department did not extend the period after subsequent information was given, this was not important since an applicant established the requirements for the cer-

tificate of need with the information that had already been received. *Open MRI, LLC v. Miss. State Dep't of Health*, 939 So. 2d 813 (Miss. Ct. App. 2006).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department of Health to determine what portion of the

service area's population the applicant is likely to serve. *Mississippi State Dep't of Health v. Golden Triangle Regional Medical Ctr.*, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. *HTI Health Servs., Inc. v. Mississippi State Dep't of Health*, 603 So. 2d 848 (Miss. 1992).

Section 41-7-197(1) does not mandate actual written notice to "affected persons," only that the Department of Health should adopt procedures for such notice. *City of Durant v. Humphreys County Mem. Hosp./Extended Care Facility*, 587 So. 2d 244 (Miss. 1991).

2. Due process.

In a case involving a certificate of need, procedural due process rights were not violated where all of the steps under Miss. Code Ann. § 41-7-197 were followed; no parties to the proceeding, no health care facilities in the same health care service area, and no others originally noticed, appeared to request a new hearing. The issue of import to satisfy the requirements of the Mississippi State Health Plan was not the specific route, but rather the number of procedures, and notice of a new route was given. *Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc.*, 984 So. 2d 967 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

The duties of the State Health Officer in making decisions regarding certificates of need are mandatory. No provision can be found for the State Health Officer to re-

cuse himself from those duties or to delegate them to some other person. *Amy*, Feb. 13, 2004, A.G. Op. 03-0638.

§ 41-7-199. Repealed.

Repealed by Laws, 1983, ch. 484, § 11, eff from and after April 9, 1983.

[Laws, 1979, ch. 451, § 15; Laws, 1980, ch. 493, § 9; Laws, 1982, ch. 482, § 6]

Editor's Note — Former § 41-7-199 provided for administrative appeal of any written order concerning issuance of certificate of need.

§ 41-7-201. Appeal of final order pertaining to certificate of need; home health agencies; other health-care facilities.

(1) The provisions of this subsection (1) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix):

(a) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within thirty (30) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the thirty (30) days for filing as heretofore provided.

Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within fifty (50) days or within such additional time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(c) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

(d) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(e) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(2) The provisions of this subsection (2) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health-care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix):

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health-

care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health-care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health or the chancery court for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this 120-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided

in paragraph (g) of this subsection. In the event the chancery court has not rendered a final order within the 120-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the Supreme Court affirm the order of the State Department of Health.

(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) days of the date of filing the appeal.

(e) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

(f) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the court affirm the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

(ii) The Supreme Court has entered a final order affirming the chancery court.

(g) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(h) Within thirty (30) days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed to the Supreme Court.

SOURCES: Laws, 1979, ch. 451, § 16; Laws, 1983, ch. 484, § 8; Laws, 1985, ch. 534, § 11; Laws, 1986, ch. 437, § 44; Laws, 1992, ch. 512 § 1; Laws, 1999, ch. 583, § 3, eff from and after June 30, 1999.

Editor's Note — Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

Cross References — Applicability of this section to notices of appeals from decisions relative to the licensing of birthing centers, see § 41-77-21.

Federal Aspects — Title XVIII and Title XIX programs of the Social Security Act, see 42 USCS §§ 1395 et seq. and 1396 et seq.

JUDICIAL DECISIONS

1. In general.
2. Substantial evidence.

1. In general.

Granting to the medical center a certificate of need application to relocate was proper because the medical center demonstrated the deficiencies in its current location and its reasons for needing a new facility, and also provided evidence of its long-term plans and the recommendations of firms regarding the appropriateness of the relocation; the Mississippi State Department of Health's decision that the current location has exceeded its useful life was not against the manifest weight of the evidence, nor was its decision arbitrary or capricious. *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health*, 954 So. 2d 505 (Miss. Ct. App. 2007).

Substantial evidence did not exist to support a State Health Department's issuance of a certificate of need (CON), and the chancellor correctly revoked the CON because a hospital system's proposal was actually a proposal to add beds, and a different criterion under Miss. Code Ann. § 41-7-191 should have been applied; the hospital system admitted that it could not meet the correct criterion. *Singing River Hosp. Sys. v. Biloxi Reg'l Med. Ctr.*, 928 So. 2d 810 (Miss. 2006).

Decision by the Mississippi State Department of Health to partially grant a certificate of need in an amended relocation application was reversed under Miss. Code Ann. § 41-7-201(2)(f) because the appropriate standard of need was not met for a new hospital; the application was not really for a relocation. *St. Dominic-Madi-*

son County Med. Ctr. v. Madison County Med. Ctr., — So. 2d —, 2005 Miss. LEXIS 560 (Miss. Sept. 8, 2005).

Court erred in reversing the Mississippi State Department of Health's approval of a corporation's application for a certificate of need for the establishment of a long-term acute care hospital because the corporation's calculation of average length of stay was supported by substantial evidence under Miss. Code Ann. § 41-7-201(2)(f) and was not arbitrary or capricious. *Miss. State Dep't of Health v. Rush Care, Inc.*, 882 So. 2d 205 (Miss. 2004).

Certificate of need to establish cardiac catheterization and open-heart surgery services properly granted to hospital where the health department considered both the impact on existing providers and the need for these services to the area; the methodology used to derive market share was not so flawed as to render the decision arbitrary or capricious. *Delta Reg'l Med. Ctr., v. State Dept. of Health*, 759 So. 2d 1174 (Miss. 1999).

Supreme Court will not reverse final order of Mississippi State Department of Health unless agency's decision was arbitrary or capricious. *Cain v. Mississippi State Dep't of Health*, 666 So. 2d 506 (Miss. 1995).

The Mississippi State Health Department's use of market share analysis to determine a healthcare provider's population base in reviewing an application for a certificate of need to establish a cardiac catheterization service was not arbitrary or capricious; the market share analysis is merely statistical method used to evaluate the need for a particular service, and it enables the Mississippi State Department

of Health to determine what portion of the service area's population the applicant is likely to serve. *Mississippi State Dep't of Health v. Golden Triangle Regional Medical Ctr.*, 603 So. 2d 854 (Miss. 1992).

The Mississippi State Health Department's use of market share analysis to determine population base in reviewing certificate of need applications is not arbitrary or capricious. *HTI Health Servs., Inc. v. Mississippi State Dep't of Health*, 603 So. 2d 848 (Miss. 1992).

2. Substantial evidence.

Mississippi State Department of Health (MSDH) did not err in granting a certificate of need (CON) to a company for the provision of mobile magnetic resonance imaging (MRI) services because, even though a customer terminated its service agreement with the MRI company while the CON application was pending, substantial evidence supported the MSDH's determination that the MRI company would still be able to perform enough procedures for its remaining customers to meet the annual requirements of the state health plan. *Miss. State Dep't of Health v. Baptist Mem. Hospital-DeSoto, Inc.*, 984 So. 2d 967 (Miss. 2008).

The granting by the Mississippi State Department of Health of a certificate of need to establish a forty-bed, long-term, acute-care hospital (LTACH) was upheld because under Miss. Code Ann. § 41-7-201(2)(f), substantial evidence supported the finding that the applicant met the twin requirements of 450 LTACH admissions with an average length of stay of 25 days. *Greenwood Leflore Hosp. v. Miss. State Dep't of Health*, 980 So. 2d 931 (Miss. 2008).

Mississippi State Department of Health did not err when it granted a certificate of need to provide magnetic resonance services to an applicant where the evidence

showed that the projected unit would have provided for a minimum number of procedures per year based on information in a state health plan, pursuant to Miss. Code Ann. § 41-7-193(1); moreover, there was substantial evidence to show that a full range of services was available, and the Department did not base its decision on faulty financial projections. *Open MRI, LLC v. Miss. State Dep't of Health*, 939 So. 2d 813 (Miss. Ct. App. 2006).

There was substantial evidence to support the department of health's decision to grant a hospital a certificate of need (CON) to allow the addition of 81 new acute care beds, because, inter alia, the department staff had weighed and considered all the factors under the Mississippi State Health Plan and the Mississippi Certificate of Need Review Manual general criteria, and the hospital adequately documented the need for the proposed project, based on growth and utilization of facilities and services and an occupancy rate in excess of 70 percent for the most recent two years. *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health*, 910 So. 2d 1077 (Miss. 2005).

There was substantial evidence to support the department of health's decision to grant a hospital a certificate of need (CON) to allow an expansion, because, inter alia, the department staff found that the project was in substantial compliance for the expansion and renovation contained in the Mississippi State Health Plan and the Mississippi Certificate of Need Review Manual, and the need requirement was upheld because of the rapid growth in the types of services offered at the facility, the increased number of physicians on the hospital's medical staff, and the increase in the demand for ancillary services. *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health*, 910 So. 2d 1077 (Miss. 2005).

§ 41-7-202. Stay of commission proceedings pending appeal.

There shall be a "stay of proceedings" of any written decision of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix), for a period of thirty (30) days from the date of that decision. The stay of proceedings shall expire at the termination of thirty (30) days; however, no license to operate any such home

health agency that is the subject of the decision shall be issued by the licensing agency, and no certification for such home health agency to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted until all statutory appeals have been exhausted or the time for such appeals has expired. The stay of proceedings provided for in this section shall not apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health-care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix).

SOURCES: Laws, 1983, ch. 484, § 9; Laws, 1985, ch. 534, § 12; Laws, 1986, ch. 437, § 45; Laws, 1992, ch. 512, § 2, eff from and after passage (approved May 14, 1992).

Editor's Note — Laws of 1986, ch. 437, § 51, eff from and after July 1, 1986, amended Laws of 1985, ch. 534, § 15, by deleting the provision which would have repealed this section as of July 1, 1986.

Federal Aspects — Provisions of Title XVIII of the Social Security Act, see 42 USCS §§ 1395 et seq.

Provisions of Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq.

§ 41-7-203. Repealed.

Repealed by Laws, 1983, ch. 484, § 11, eff from and after April 9, 1983.
[Laws, 1979, ch. 451, § 17]

Editor's Note — Former § 41-7-203 created the position of administrative appeal judge, and provided for the appointment to fill the position.

§ 41-7-205. Nonsubstantive projects; exemption from formal review.

The State Department of Health shall provide an expedited review for those projects which it determines to warrant such action. All requests for such an expedited review by the applicant must be made in writing to the State Department of Health. The State Department of Health shall make a determination as to whether expedited review is appropriate within fifteen (15) days after receipt of a written request. The State Department of Health shall render its decision concerning the issuance of a certificate of need within ninety (90) days after the receipt of a completed application. A project is subject to expedited review only if it meets one (1) of the following criteria:

(a) A transfer or change of ownership of a health-care facility wherein the facility continues to operate under the same category of license or permit as it possessed prior to the date of the proposed change of ownership and none of the other activities described in Section 41-7-191(1) take place in conjunction with such transfer;

(b) Replacement of equipment with used equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan;

(c) A request for project cost overruns that exceed the rate of inflation as determined by the State Department of Health;

(d) A request for relocation of services or facilities if the relocation of such services or facilities (i) involves a capital expenditure by or on behalf of a health-care facility, or (ii) is more than one thousand three hundred twenty (1,320) feet from the main entrance of the health-care facility or the facility where the service is located;

(e) A request for a certificate of need to comply with duly recognized fire, building, or life safety codes, or to comply with state licensure standards or accreditation standards required for reimbursements.

SOURCES: Laws, 1979, ch. 451, § 11; Laws, 1980, ch. 493, § 10; Laws, 1982, ch. 482, § 7; Laws, 1985, ch. 534, § 13; Laws, 1986, ch. 338; Laws, 1986, ch. 437, § 46; Laws, 1987, ch. 515, § 7; Laws, 1999, ch. 583, § 5, eff from and after June 30, 1999.

§ 41-7-207. Emergency replacement of facilities; expedited review.

Notwithstanding any other provisions of Sections 41-7-171 through 41-7-209, when the need for any emergency replacement occurs, the certificate of need review process may be expedited by promulgation of administrative procedures for expenditures necessary to alleviate an emergency condition. Emergency replacement means the replacement of partial facilities or equipment the replacement of which is not exempt from certificate of need review pursuant to the medical equipment replacement exemption provided in Section 41-7-191(1) (f), without which the operation of the facility and the health and safety of patients would be immediately jeopardized. Expenditures under this section shall be limited to the replacement of those necessary facilities or equipment, the loss of which constitutes an emergency.

SOURCES: Laws, 1979, ch. 451, § 19; Laws, 1999, ch. 583, § 6, eff from and after June 30, 1999.

§ 41-7-209. Violations.

(1) Any person or entity violating the provisions of Sections 41-7-171 through 41-7-209, or regulations promulgated thereunder, by not obtaining a certificate of need, by deviating from the provisions of a certificate of need, or by refusing or failing to cooperate with the State Department of Health in its exercise or execution of its functions, responsibilities and powers shall be subject to the following:

(a) Revocation of the license of a health-care facility or a designated section, component or bed service thereof, or revocation of the license of any other person for which the State Department of Health is the licensing agency. If the State Department of Health lacks jurisdiction to revoke the license of such person, the State Health Officer shall recommend and show cause to the appropriate licensing agency that such license should be revoked.

(b) Nonlicensure by the State Department of Health of a specific or designated bed service offered by the entity or person;

(c) Nonlicensure by the State Department of Health where infractions occur concerning the acquisition or control of major medical equipment;

(d) Revoking, rescinding or withdrawing a certificate of need previously issued.

(2) Violations of Sections 41-7-171 through 41-7-209, or any rules or regulations promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent or incautious disregard for such statutes or rules and regulations, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) for each such offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in any county of the state wherein any such violation, or portion thereof, occurred.

(3) The Attorney General, upon certification by the State Health Officer, shall seek injunctive relief in a court of proper jurisdiction to prevent violations of Sections 41-7-171 through 41-7-209 or any rules or regulations promulgated in furtherance of Sections 41-7-171 through 41-7-209 in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of any such violation.

(4) Major third party payers, public or private, shall be notified of any violation or infraction under this section and shall be requested to take such appropriate punitive action as is provided by law.

SOURCES: Laws, 1979, ch. 451, § 18; Laws, 1980, ch. 493, § 11; Laws, 1981, ch. 484, § 15; Laws, 1986, ch. 437, § 47, eff from and after July 1, 1986.

Cross References — Applicability of this section to violations of provisions relative to the licensing of birthing centers, see § 41-77-23.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

STATEWIDE HEALTH COORDINATING COUNCIL [REPEALED]

Sec.

| | |
|-----------|-----------|
| 41-7-301. | Repealed. |
| 41-7-302. | Repealed. |
| 41-7-303. | Repealed. |
| 41-7-304. | Repealed. |
| 41-7-305. | Repealed. |

§ 41-7-301. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Laws, 1981, ch. 407, § 1; Laws, 1982, ch. 315, § 1; Laws, 1984, ch. 368, § 1; reenacted, Laws, 1986, ch. 339, § 1]

Editor's Note — Former § 41-7-301 created the statewide health coordinating council.

§ 41-7-302. Repealed.

Repealed by Laws, 1987, ch. 515, § 8(7) eff from and after July 1, 1988.
[Laws, 1986, ch. 437, § 52; Laws, 1987, ch. 515, § 8]

Editor's Note — Former Section 41-7-302 related to the establishment of a statewide health coordinating council.

§ 41-7-303. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.
[Laws, 1981, ch. 407, § 2; Laws, 1982, § 315, § 2; Laws, 1984, ch. 368, § 2; reenacted, Laws, 1986, ch. 339, § 2]

Editor's Note — Former Section 41-7-303 specified the duties and functions of the statewide health coordinating council.

§ 41-7-304. Repealed.

Repealed by Laws, 1987, ch. 515, § 9(3), eff from and after July 1, 1988.
[Laws, 1986, ch. 437, § 53; Laws, 1987, ch. 515, § 9]

Editor's Note — Former Section 41-7-304 related to the duties and functions of the statewide health coordinating council.

§ 41-7-305. Repealed.

Repealed by Laws, 1981, ch. 407, § 5, eff from and after December 31, 1988.

[Laws, 1981, ch. 407, § 3; Laws, 1982, ch. 315, § 3; reenacted, Laws, 1984, ch. 368, § 3; reenacted, Laws, 1986, ch. 339, § 3]

Editor's Note — Former § 41-7-305 prohibited members of the commission from voting on matters in which they had an interest, and required disclosure of such interests.

Laws of 1981, ch. 407, § 5, provided for the repeal of this section effective from and after October 1, 1982. Laws of 1982, ch. 315, § 4, extended the repeal date until December 31, 1984. Subsequently, Laws of 1984, ch. 368, § 4, further extended the repeal date until December 31, 1986. Finally, Laws of 1986, ch. 339, § 4, further extended the repeal date until December 31, 1988.

HEALTH MAINTENANCE ORGANIZATIONS [REPEALED]

SEC.

41-7-401. Repealed.

§ 41-7-401. Repealed.

Repealed by Laws, 1995, ch. 613, § 35, eff from and after July 1, 1995.
[Laws, 1986, ch. 483; Laws, 1988, ch. 555; Laws, 1994, ch. 422, § 6]

Editor's Note — Former § 41-7-401 related to issuance of certificates of authority for health maintenance organizations. For current provisions relating to health maintenance organizations, see §§ 83-41-301 et seq.

CHAPTER 9

Regulation of Hospitals; Hospital Records

| | |
|--|----------|
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| Reimbursement for Trauma Care Service | 41-9-51 |
| Hospital Records — Preparation, Preservation and Destruction | 41-9-61 |
| Hospital Records — Use in Trials and Administrative Hearings | 41-9-101 |
| Rural Hospital Flexibility Act | 41-9-201 |
| Rural Health Availability Act | 41-9-301 |

REGULATION OF HOSPITALS

SEC.

| | |
|----------------------|---|
| 41-9-1. | Declaration of purpose. |
| 41-9-3. | Definitions. |
| 41-9-5. | Repealed. |
| 41-9-7. | License. |
| 41-9-9. | Application for license. |
| 41-9-11. | Issuance and renewal of license. |
| 41-9-13. | Issuance of temporary licenses. |
| 41-9-15. | Denial or revocation of license; notice, hearings and review. |
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| 41-9-19. | Effective date of rules, regulations or standards. |
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| 41-9-25 and 41-9-27. | Repealed. |
| 41-9-29. | Annual report of licensing agency. |
| 41-9-31. | Judicial review. |
| 41-9-33. | Penalties. |
| 41-9-35. | Injunction. |
| 41-9-37. | Paid educational leave for hospital employees. |

§ 41-9-1. Declaration of purpose.

The purpose of Sections 41-9-1 through 41-9-35 is to protect and promote the public health by providing for the development, establishment and enforcement of certain standards in the construction, maintenance and operation of hospitals which will insure safe, sanitary and reasonably adequate care and treatment of individuals in hospitals. The legislature hereby finds that the protection and promotion of the public health requires the measures provided for in said sections.

SOURCES: Codes, 1942, § 7146.5-02; Laws, 1948, ch. 398, § 2.

Cross References — Operation and maintenance of ambulance service, see §§ 41-55-1 et seq.

Air ambulance service districts, see §§ 41-55-31 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Operation of unit of hospital as birthing center under license issued to hospital, see § 41-77-1.

Required reporting of abuse or exploitation of patients and residents of hospitals, see § 43-47-37.
 Disciplinary action by hospital with respect to physician's hospital privileges, see § 73-25-93.

JUDICIAL DECISIONS

1. In general.

The scope of judicial review of a decision by a private hospital, which was licensed pursuant to § 41-9-1 to terminate a physician's staff privileges, was limited to a determination of whether the procedures followed by the hospital violated its own bylaw provisions for due process. Section 73-25-93 limits judicial surveillance of hospital disciplinary proceedings to the narrow inquiry of whether the hospital

complied with the procedural due process requirements prescribed by its own by-laws. In § 73-25-93, the legislature recognized the authority of a licensed hospital to control and regulate its staff privileges. The statute delineates no distinction between private or public hospitals in that it refers to any licensed hospital. *Wong v. Garden Park Community Hosp.*, 565 So. 2d 550 (Miss. 1990).

RESEARCH REFERENCES

ALR. Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 A.L.R.3d 278.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 3-6.

CJS. 41 C.J.S., Hospitals § 6.

Practice References. Health Care Administration Library (CD-ROM) (LexisNexis).

Health Care Law Sourcebook: A Compendium of Federal Laws, Regulations and Documents Relating to Health Care (Matthew Bender).

§ 41-9-3. Definitions.

As used in Sections 41-9-1 through 41-9-35:

(a) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from physical or mental infirmity, illness, disease, injury or deformity, or a place devoted primarily to providing obstetrical or other medical, surgical or nursing care of individuals, whether or not any such place be organized or operated for profit and whether any such place be publicly or privately owned. The term "hospital" does not include convalescent or boarding homes, children's homes, homes for the aged or other like establishments where room and board only are provided, nor does it include offices or clinics where patients are not regularly kept as bed patients.

(b) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(c) "Governmental unit" means the state, or any county, municipality or other political subdivision or any department, division, board or other agency of any of the foregoing, excluding all federal establishments.

(d) "Licensing agency" means the State Department of Health.

SOURCES: Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 22; Laws, 1986, ch. 437, § 14, eff from and after July 1, 1986.

Cross References — Incorporation of this section's definition of "hospital" into provisions relative to exemptions from sales tax, see § 27-65-111.

State Board of Mental Health powers and duties, see § 41-4-7.

Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

Preparation, preservation and disposition of hospital records, see §§ 41-9-61 et seq.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

Hospital as defined in this section as "care facility" for purposes of Vulnerable Adults Act, see § 43-47-5.

Applicability of this section to the disclosure of any and all information board of medical licensure has concerning physician to hospitals, see § 73-25-28.

ATTORNEY GENERAL OPINIONS

Inasmuch as county health departments do not provide care to bed patients, it appears that county health departments are not "hospitals" as defined in Section 41-9-3. Since county health de-

partments are not hospitals, records in the possession of county health departments are not hospital records. Thompson, October 18, 1995, A.G. Op. #95-0674.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 3-6.

CJS. 41 C.J.S., Hospitals § 6.

§ 41-9-5. Repealed.

Repealed by Laws, 1986, ch. 437, § 48, eff from and after July 1, 1986.

[Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 23; Laws, 1985, ch. 534, § 14; Laws, 1986, ch. 437, § 51]

Editor's Note — Former § 41-9-5 authorized the health care commission to delegate its functions.

§ 41-9-7. License.

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital in this state without a license as provided for in Section 41-9-11. No license so granted shall permit, approve or allow child placement activities by any person or governmental unit licensed hereunder.

SOURCES: Codes, 1942, § 7146.5-03; Laws, 1948, ch. 398, § 3.

Cross References — Temporary licenses, see § 41-9-13.

Penalty for operation without license, see § 41-9-33.

Injunction against operation without license, see § 41-9-35.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

“Hospital affiliated” ambulatory surgical facility, see § 41-75-1.

“Freestanding” ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am Jur. 40A *Am. Jur. 2d, Hospitals and Asylums* §§ 3-6. **CJS.** 41 *C.J.S., Hospitals* § 6.

§ 41-9-9. Application for license.

(1) An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under Section 41-9-17. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Twenty Dollars (\$20.00) for each licensed bed in the hospital which shall be paid to the licensing agency, with a minimum fee of Five Hundred Dollars (\$500.00) per hospital and a maximum fee of Five Thousand Dollars (\$5,000.00), and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by rule or regulation. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) The appropriate licensure fee, according to the schedule herein, shall be paid to the licensing agency and may be paid by check, draft or money order. A license shall not be issued to any hospital until such fee is received by the licensing agency.

(3) A fee known as a “User Fee” shall be applicable and shall be paid to the licensing agency as set out in subsection (2) of this section. This user fee shall be assessed for the purpose of the required reviewing and inspections of the proposal of any hospital in which there are additions, renovations, modernizations, expansion, alterations, conversions, modifications or replacement of the entire facility involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars (\$50.00) and a maximum user fee of Five Thousand Dollars (\$5,000.00).

SOURCES: Codes, 1942, § 7146.5-04; Laws, 1948, ch. 398, § 4; Laws, 1984, ch. 315, § 1; Laws, 1986, ch. 500, § 23; Laws, 1998, ch. 433, § 1, eff from and after July 1, 1998.

Cross References — Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

“Freestanding” ambulatory surgical facility, see § 41-75-1.

“Hospital affiliated” ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms application — for license or permit to (Rev), Hospitals, Forms 1, 2 (petition or establish and operate hospital).

§ 41-9-11. Issuance and renewal of license.

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and hospital facilities meet the requirements established under Sections 41-9-1 through 41-9-35, and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually, upon filing by the licensee, and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation and upon paying the annual fee for such license as determined by the schedule and provisions of Section 41-9-9. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

SOURCES: Codes, 1942, § 7146.5-05; Laws, 1948, ch. 398, § 5; Laws, 1980, ch. 493, § 13; Laws, 1984, ch. 315, § 2; Laws, 1986, ch. 437, § 15, eff from and after July 1, 1986.

Cross References — Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

“Freestanding” ambulatory surgical facility, see § 41-75-1.

“Hospital affiliated” ambulatory surgical facility, see § 41-75-1.

RESEARCH REFERENCES

Am Jur. 13A Am. Jur. Pl & Pr Forms administrative agency — granting license for (Rev), Hospitals, Form 8 (order — by ad establishment and operation of hospital).

§ 41-9-13. Issuance of temporary licenses.

The licensing agency may issue temporary licenses under Sections 41-9-1 through 41-9-35 which shall be good for not more than six (6) months.

SOURCES: Codes, 1942, § 7146.5-01; Laws, 1948, ch. 398, § 1; Laws, 1979, ch. 451, § 24; Laws, 1986, ch. 437, § 16, eff from and after July 1, 1986.

Cross References — Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

§ 41-9-15. Denial or revocation of license; notice, hearings and review.

The licensing agency, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under Section 41-9-1 through 41-9-35.

Such notice shall be effected by registered mail, or by personal service, setting forth the particular reasons for the proposed action and a fixing date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision, pursuant to Section 41-9-31.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to Section 41-9-31. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency. Any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SOURCES: Codes, 1942, § 7146.5-06; Laws, 1948, ch. 398, § 6; Laws, 1980, ch. 493, § 14, eff from and after passage (approved May 13, 1980).

Cross References — Subpoena for witnesses, generally, see § 13-3-93.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (complaint, petition, or declaration — by (Rev), Administrative Law, Form 341.2 license holder — against administrative

agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, Forms 3 et seq. (licensing and regulation).

16A Am. Jur. Pl & Pr Forms (Rev),

Licenses and Permits, Form 47 (petition or application — allegation — denial of proper hearing and failure to apprise licensee of complaint against such licensee as grounds for review of revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement).

§ 41-9-17. Rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals to be licensed under Section 41-9-11 as may be designed to further the accomplishment of the purposes of Sections 41-9-1 through 41-9-35 in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. Any rule, regulation or standard adopted hereunder shall be considered as promulgated and effective from and after the time the same is recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Minimum Standard of Operation for Mississippi Hospitals." Said book shall be open and available to all hospitals and the public generally at all reasonable times. Upon the adoption of any such rule, regulation or standard, the licensing agency shall mail copies thereof to all hospitals in the state which have filed with said agency their names and addresses for this purpose, but the failure to mail the same or the failure of the hospital to receive the same shall in nowise affect the validity thereof. No such rules, regulations or standards shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed therein.

SOURCES: Codes, 1942, § 7146.5-07; Laws, 1948, ch. 398, § 7; Laws, 1980, ch. 493, § 15; Laws, 1986, ch. 437, § 17, eff from and after July 1, 1986.

Cross References — Ambulatory surgical facility owned or operated by entity or person other than hospital or hospital holding company, see § 41-75-1.

Ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

Federal certification of ambulatory surgical facility owned or operated by hospital or hospital holding, leasing, or management company, see § 41-75-1.

"Freestanding" ambulatory surgical facility, see § 41-75-1.

"Hospital affiliated" ambulatory surgical facility, see § 41-75-1.

JUDICIAL DECISIONS

1. In general.

In an action contending, inter alia, that the refusal of defendant hospital to admit one plaintiff to deliver her baby, allegedly

because she was black and indigent, violated §§ 41-9-1 through 41-9-35, the court held that, in general, the statutes were irrelevant to plaintiff's claims; § 41-9-17,

the only section that might be interpreted as germane, was inapplicable as imposing no duties which the hospital owed plaintiff but merely establishing an enforcement system for associated regulations

the contents of which plaintiff failed to provide proof. *Campbell v. Mincey*, 413 F. Supp. 16 (N.D. Miss. 1975), *aff'd*, 542 F.2d 573 (5th Cir. 1976).

§ 41-9-19. Effective date of rules, regulations or standards.

Any hospital which is in operation at the time of promulgation of any applicable rules, regulations or standards under Section 41-9-17, shall be given a reasonable time, under the particular circumstances not to exceed one year from the date of such promulgation, within which to comply with such rules, regulations or standards.

SOURCES: Codes, 1942, § 7146.5-08; Laws, 1948, ch. 398, § 8.

§ 41-9-21. Inspections and consultations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary. The licensing agency may prescribe by regulations that any licensee or applicant desiring to make specified types of alteration or addition to the facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the rules, regulations or standards authorized in Section 41-9-17. Necessary conferences and consultations may be provided.

SOURCES: Codes, 1942, § 7146.5-09; Laws, 1948, ch. 398, § 9.

§ 41-9-23. Information confidential.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under Sections 41-9-1 through 41-9-35 shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of these services for hospitals in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and by Section 41-9-29.

SOURCES: Codes, 1942, § 7146.5-12; Laws, 1948, ch. 398, § 12; Laws, 1984, ch. 362, § 1, eff from and after July 1, 1984.

§§ 41-9-25 and 41-9-27. Repealed.

Repealed by Laws, 1980, ch. 493, § 22, eff from and after May 13, 1980.
[Laws 1948, ch. 398, §§ 10, 11]

Editor's Note — Former § 41-9-25 related to the advisory hospital licensing council, appointed by the Mississippi Commission on Hospital Care, to advise and consult with the commission in carrying out its functions.

Former § 41-9-27 set out the specific duties of the advisory hospital council.

§ 41-9-29. Annual report of licensing agency.

The licensing agency shall prepare and publish an annual report of its activities and operations under Sections 41-9-1 et seq. A reasonable number of copies of such publication(s) shall be available in the office of the licensing agency to be furnished to persons requesting them, for a nominal fee.

SOURCES: Codes, 1942, § 7146.5-13; Laws, 1948, ch. 398, § 13; Laws, 1986, ch. 437, § 18, eff from and after July 1, 1986.

Cross References — Use of statistical data collected under this section, see § 41-9-23.

§ 41-9-31. Judicial review.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 41-9-15, file a notice of appeal in the chancery court of the First Judicial District of Hinds County or the chancery court of the county in which the hospital is located or to be located, and the chancery clerk thereof shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from such notice, certify and file with the court a copy of the record and decision, including the transcript of the hearings, on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence. However, upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the licensing agency, and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter of the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder.

SOURCES: Codes, 1942, § 7146.5-14; Laws, 1948, ch. 398, § 14; Laws, 1980, ch. 493, § 16; Laws, 1986, ch. 437, § 19, eff from and after July 1, 1986.

Cross References — Denial or revocation of license, see § 41-9-15.

Effect of appeal on finality of decision, see § 41-9-15.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq. (grant or refusal of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq. (revocation, suspension, and reinstatement of licenses).

§ 41-9-33. Penalties.

Any person establishing, conducting, managing or operating any hospital without a license as provided for in Section 41-9-11 shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than one thousand dollars (\$1,000.00) for the first offense and not more than one thousand dollars (\$1,000.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

SOURCES: Codes, 1942, § 7146.5-15; Laws, 1948, ch. 398, § 15; Laws, 1980, ch 493, § 17, eff from and after passage (approved May 13, 1980).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-9-35. Injunction.

Notwithstanding the existence or pursuit of any other remedy, the licensing agency, may in the manner provided by law, upon the advice of the attorney general who shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license as provided for in Section 41-9-11.

SOURCES: Codes, 1942, § 7146.5-16; Laws, 1948, ch. 398, § 16.

Cross References — Injunctions, generally, see §§ 11-13-1 et seq. Injunction against unlicensed practice of profession, see § 73-51-1.

§ 41-9-37. Paid educational leave for hospital employees.

(1)(a) A hospital may grant paid educational leave to those applicants it deems qualified therefor, upon such terms and conditions as it may impose and as provided for in this section.

(b) In order to be eligible for paid educational leave, an applicant must:

- (i) Be working at the sponsoring hospital at the time of application;
- (ii) Attend any college or school approved and designated by the sponsoring hospital; and

(iii) Agree to work in a health-care occupation as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional in the sponsoring hospital for a period of time equivalent to the period of time for which the applicant receives paid educational leave compensation, calculated to the nearest whole month, but in no event less than two (2) years.

(c)(i) Before being granted paid educational leave, each applicant shall enter into a contract with the sponsoring hospital agreeing to the terms and conditions upon which the paid educational leave shall be granted. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The contract shall be signed by the administrator of the sponsoring hospital and the recipient of paid educational leave compensation. If the recipient is a minor, his or her minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

(ii) The sponsoring hospital shall have the authority to cancel any contract made between it and any recipient for paid educational leave upon such cause being deemed sufficient by the administrator of the hospital.

(iii) The sponsoring hospital is vested with full and complete authority and power to sue in its own name any recipient for any balance due to the hospital on any such uncompleted contract. The sponsoring hospital may contract with a collection agency or banking institution for collection of any balance due to the hospital from any recipient. The sponsoring hospital and its employees and, if applicable, its board of trustees are immune from any suit brought in law or equity for actions taken by the collection agency or banking institution incidental to or arising from their performance under the contract. The sponsoring hospital, collection agency and banking institution may negotiate for the payment of a sum that is less than full payment in order to satisfy any balance the recipient owes.

(iv) Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional license that was earned through the paid educational leave compensation granted under this section.

(v) A finding by the sponsoring hospital of a default by the recipient shall be a finding of unprofessional conduct and, therefore, a basis for the revocation of the professional license that was obtained through the educational leave program. A finding by the sponsoring hospital of default shall be a disciplinary action, not a collection action, and shall not be affected by the recipient declaring bankruptcy.

(vi) Notice of pending default status, the consequences of a default and the hearing to determine the pending default status shall be mailed by the sponsoring hospital to the recipient at the last known address.

(vii) The sponsoring hospital shall conduct a hearing of pending default status, make a final determination, and, if appropriate, issue a finding of default.

(viii) Recipients may appear at the hearing of pending default status, either personally or through counsel, or both, and produce and cross-examine witnesses or evidence in the recipient's behalf. The procedure of the hearing shall not be bound by the Mississippi Rules of Civil Procedure and Evidence.

(ix) If at the hearing a recipient is found to be in default, a copy of the finding of default shall be forwarded to the appropriate licensing agency.

(x) Appeals from a finding of default made by the sponsoring hospital shall be to the circuit court of the county in which the hospital is located.

(xi) Rules and regulations governing the hearing of pending default status and other applicable matters shall be promulgated by the sponsoring hospital.

(xii) Any person who is subject to the revocation of his or her professional license for not meeting the terms of an educational loan contract may appear before the appropriate licensing agency to show mitigating circumstances for failure to meet the terms of the contract, and may appeal any revocation of his or her professional license under the laws applicable to the licensing agency.

(xiii) A license that has been revoked under this section shall be reinstated upon a showing of proof that the recipient is no longer in default.

(xiv) These procedures shall only be applicable to educational leave contracts entered into under this section and shall not apply to educational leave contracts entered into with any state health institution pursuant to Section 37-101-291 or Section 37-101-293, as amended.

(2)(a) Any recipient who is granted paid educational leave by a hospital shall be compensated by the sponsoring hospital during the time the recipient is in school, at the rate of pay received by a nurse's aide employed at the hospital. All educational leave compensation received by the recipient while in school shall be considered earned conditioned upon the fulfillment of the terms and obligations of the educational leave contract and this section. However, no recipient of full-time educational leave shall accrue personal or major medical leave while the recipient is on paid educational leave. Recipients of paid educational leave shall be responsible for their individual costs of tuition and books.

(b) Paid educational leave shall be granted only upon the following conditions:

(i) The recipient shall fulfill his or her obligation under the contract with the sponsoring hospital by working as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional. The total compensation that the recipient was paid while on educational leave shall be considered as unconditionally earned on an annual pro rata basis for each year of service rendered under the educational leave contract as a health-care professional in the sponsoring hospital.

(ii) If the recipient does not work as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational

therapist, physical therapist or other health-care professional in the sponsoring hospital for the period required under this section, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that the recipient was paid while on paid educational leave that has not been unconditionally earned, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation or the date that the recipient last worked at the sponsoring hospital, whichever is the later date. In addition, there shall be included in any contract for paid educational leave a provision for liquidated damages equal to Five Thousand Dollars (\$5,000.00), which may be reduced on a pro rata basis for each year served under the contract.

(iii) If any recipient fails or withdraws from school at any time before successfully completing his or her health-care training, the recipient shall be liable for repayment on demand of the amount of the total compensation that the recipient was paid while on paid educational leave, with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. However, the recipient shall not be liable for liquidated damages, and if the recipient returns to work at the sponsoring hospital in the same position held at the hospital before accepting educational leave, or a position approved by the hospital, the recipient shall not be liable for payment of any interest on the amount owed.

(iv) The issuance and renewal of the professional license required to work as a licensed practical nurse, registered nurse, nurse practitioner, speech pathologist, occupational therapist, physical therapist or other health-care professional for which the educational leave was granted shall be contingent upon the repayment of the total compensation that the recipient received while on paid educational leave. Failure to meet the terms of an educational loan contract shall be grounds for revocation of the professional license that was earned through the paid educational leave compensation granted under this section. Any individual who receives any amount of paid educational leave compensation while in school and subsequently receives a professional license shall be deemed to have earned the professional license through paid educational leave. Any person who is subject to the revocation of his or her professional license for not meeting the terms of an educational loan contract may appear before the appropriate licensing agency to show mitigating circumstances for failure to meet the terms of the contract, and may appeal any revocation of his or her professional license under the laws applicable to the licensing agency.

(v) These procedures shall only apply to educational leave contracts entered into under this section and shall not apply to educational leave contracts entered into with any state institution pursuant to Section 37-101-291 or Section 37-101-293, as amended.

SOURCES: Laws of 2003, ch. 487, § 1, eff from and after July 1, 2003.

Editor's Note — Laws, 2003, ch. 487, § 2 provides:

“SECTION 2. Section 1 of this act shall be codified in Chapter 9 of Title 41, Mississippi Code of 1972.”

REIMBURSEMENT FOR TRAUMA CARE SERVICE

SEC.

41-9-51. Hospitals authorized to charge patient for reasonable cost of activating trauma care services under certain circumstances; reimbursement by health-care insurer [Repealed effective July 1, 2011].

§ 41-9-51. Hospitals authorized to charge patient for reasonable cost of activating trauma care services under certain circumstances; reimbursement by health-care insurer [Repealed effective July 1, 2011].

Any hospital that reasonably activates a trauma care team in response to a request for trauma care services may charge the patient for the reasonable cost of activating those services and shall be reimbursed for those services by the health-care insurer by assignment from the patient or from the patient. That cost shall be reimbursed regardless of whether services were actually rendered to the patient, and those trauma care services shall be deemed as a matter of law to have been medical services provided to the patient.

SOURCES: Laws, 2008, ch. 549, § 8, eff from and after July 1, 2008.

Editor's Note — Laws of 2008, ch. 549, § 9, provides:

“SECTION 9. This act shall stand repealed on July 1, 2011.”

HOSPITAL RECORDS — PREPARATION, PRESERVATION AND DESTRUCTION

SEC.

41-9-61. Definitions.

41-9-63. Hospitals required to prepare and maintain hospital records.

41-9-64. Electronic medical records containing electronic signature deemed signed.

41-9-65. Hospital records constitute hospital property subject to reasonable access.

41-9-67. Hospital records not public records; privileged communications rule not impaired.

41-9-68. Certain hospital records exempt from requirement of public access.

41-9-69. Period of retention of hospital records.

41-9-71. Early retirement of hospital records on consent of patient and physician.

41-9-73. Retention of hospital records for longer periods.

41-9-75. Abstracts of hospital records; destruction of originals.

41-9-77. Reproduction of hospital records.

41-9-79. Disposition of hospital records on closing of hospital.

41-9-81. Business records of hospitals.

41-9-83. Violations; civil liability.

§ 41-9-61. Definitions.

As used in Sections 41-9-61 through 41-9-83:

(a) "Hospital" shall have the meaning ascribed thereto by Section 41-9-3, regardless of the type of ownership or form of management or organization of the institution, and it shall include the proprietor and operator thereof.

(b) "Hospital records" shall mean, without restriction, those medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and given, notes, entries, X-rays and other written or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care. Such records shall also include abstracts of the foregoing data customarily made or made as provided in Section 41-9-75. Such records shall not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution nor shall "hospital records" include any records consisting of nursing audits, physician audits, departmental evaluations or other evaluations or reviews which are used only for in-service education programs, or which are required only for accreditation or for participation in federal health programs.

(c) "Patient" shall mean outpatients, inpatients, persons dead on arrival, and the newborn.

(d) "Retirement," or variations thereof, shall mean the withdrawal from current files of hospital records, business records or parts thereof on or after the expiration of the applicable minimum period of retention established pursuant to Section 41-9-69. However, no hospital record, business record, or parts thereof, shall be subject to retirement where otherwise required by law to be kept as a permanent record.

(e) "Licensing agency" shall mean the State Department of Health.

(f) "Business records" shall mean all those books, ledgers, records, papers and other documents prepared, kept, made or received in hospitals that pertain to the organization, administration or management of the business and affairs of hospitals, but which do not constitute hospital records as hereinabove defined.

SOURCES: Codes, 1942, § 7146-51; Laws, 1962, ch. 411, § 1; Laws, 1975, ch. 353; Laws, 1980, ch. 493, § 18; Laws, 1986, ch. 437, § 20, **eff from and after July 1, 1986.**

Cross References — Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions, see § 11-1-52.

Health care commission, see §§ 41-7-171 et seq.

Licensing agency for hospitals, see § 41-9-3.

Business records of hospitals, see § 41-9-81.

Use of hospital records in trials and administrative hearings, see §§ 41-9-101 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

RESEARCH REFERENCES

ALR. Admissibility of hospital record relating to intoxication or sobriety of patient. 38 A.L.R.2d 778.

Admissibility of hospital record relating to cause or circumstances of accident or incident in which patient sustained injury. 44 A.L.R.2d 553.

Admissibility of hospital record relating to physician's opinion as to whether patient is malingering or feigning injury. 55 A.L.R.2d 1031.

Admissibility in civil action of electroencephalogram, electrocardiogram, or other record made by instrument used in medical test, or of report based upon such test. 66 A.L.R.2d 536.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

§ 41-9-63. Hospitals required to prepare and maintain hospital records.

All hospitals, their officers or employees and medical and nursing personnel practicing therein, shall with reasonable promptness prepare, make and maintain true and accurate hospital records complying with such methods and minimum standards as may be prescribed from time to time by rules and regulations adopted by the licensing agency.

SOURCES: Codes, 1942, § 7146-52; Laws, 1962, ch. 411, § 2, eff 60 days from and after passage (approved March 28, 1962).

JUDICIAL DECISIONS

1. Preference card.

Probative value of the doctor's preference card, had it been produced, would have been to establish that the doctor in fact specified the anti-embolic stockings, or that he did not; however, the trial court found that the stockings had not been

used in the mother's surgery; therefore, the son met his burden of proof to show that the stockings were not used and was unharmed by the absence of the preference card. *Young v. Univ. of Miss. Med. Ctr.*, 914 So. 2d 1272 (Miss. Ct. App. 2005).

§ 41-9-64. Electronic medical records containing electronic signature deemed signed.

An electronic medical record or medical order containing an electronic signature is considered to be signed as a matter of law, if the electronic signature is affixed or verified in conformity with a reasonable security procedure for the purpose of verification of electronic signatures.

SOURCES: Laws, 2000, ch. 441, § 1, eff from and after passage (approved Apr. 18, 2000.)

§ 41-9-65. Hospital records constitute hospital property subject to reasonable access.

(1) Hospital records are and shall remain the property of the various hospitals, subject however to reasonable access to the information contained in the records upon good cause shown by the patient, his personal representatives or heirs, his attending medical personnel and his duly authorized nominees, and upon payment of any reasonable charges for that service. Nothing in this section shall be construed to deny access to hospital records by representatives and officials of the State Department of Health, in the discharge of their official duties, under Sections 41-3-15, 41-23-1 and 41-23-2.

(2) Nothing in this section shall be construed to prevent an heir from obtaining access to a decedent's medical records under Section 41-10-3.

SOURCES: Codes, 1942, § 7146-53; Laws, 1962, ch. 411, § 3; Laws, 1988, ch. 557, § 4; Laws, 2009, ch. 524, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (2) and designated the former provisions of the section as (1); and in (1), substituted “information contained in the records” for “information contained therein” and made minor stylistic changes.

Cross References — Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions, see § 11-1-52.

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by granting the corporations summary judgment on the issue of standing in the law firm's anti-trust lawsuit, as the law firm's clients only had standing to object to any fees associated with retrieval of their medical records under Miss. Code Ann. § 41-9-65, and the law firm was not a real party in interest under Miss. R. Civ. P. 17(a). *Owen & Galloway, L.L.C. v. Smart Corp.*, 913 So. 2d 174 (Miss. 2005).

In light of the highly personal nature of a patient's medical and hospital records

and of the problems that could result from their improper release, a hospital properly refused to reproduce and release voluminous patient records when it received only a form request and offer to pay for “reasonable access”; a reasonable response would be to allow access if representatives of the requesting facility appeared personally at the hospital, checked the records, and indicated those for which they would be willing to pay for copies. *Young v. Madison Gen. Hosp.*, 337 So. 2d 931 (Miss. 1976).

RESEARCH REFERENCES

ALR. Discovery of hospital's internal records or communications as to qualifica-

tions or evaluations of individual physician. 81 A.L.R.3d 944.

§ 41-9-67. Hospital records not public records; privileged communications rule not impaired.

Except as otherwise provided by law, hospital records shall not constitute public records, and nothing contained in Sections 41-9-61 through 41-9-83

shall be deemed to impair any privilege of confidence conferred by law or the Mississippi Rules of Evidence on patients, their personal representatives or heirs, by Section 13-1-21, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 7146-59; Laws, 1962, ch. 411, § 9; Laws, 1991, ch. 573, § 109, eff from and after August 14, 1991 (the date the United States Attorney General stated that this amendment was not subject to preclearance under the Voting Rights Act).

Editor's Note — The United States Attorney General, by letter dated August 14, 1991, stated that the amendment to § 41-9-67 by Laws of 1991, ch. 573, § 109, is not a change which affects voting, and therefore, is not subject to Section 5 preclearance under the Voting Rights Act of 1965.

Cross References — Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

JUDICIAL DECISIONS

1. In general.

In light of the highly personal nature of the patient's medical and hospital records and of the problems that could result from their improper release, a hospital properly refused to reproduce and release voluminous patient records when it received only a form request and offer to pay for "reasonable access"; a reasonable response would be to allow access if representatives of the requesting facility appeared personally at the hospital, checked the records, and indicated those for which they would

be willing to pay for copies. *Young v. Madison Gen. Hosp.*, 337 So. 2d 931 (Miss. 1976).

An injured automobile passenger waived his patient-doctor privilege as to communication and hospital records when he put on the stand a doctor who was in possession of the records which he had secured for use in connection with his testimony, and the doctor's testimony indicated that the record was used by him on the witness stand. *Knighton v. Knighton*, 253 So. 2d 846 (Miss. 1971).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-68. Certain hospital records exempt from requirement of public access.

Records maintained by public hospitals, except the official minutes of the board of trustees, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

SOURCES: Laws, 1983, ch. 424, § 18, eff from and after July 1, 1983.

Editor's Note — The Mississippi Public Records Act of 1983, referred to in this section, is Laws of 1983, ch. 424, §§ 1-9, which appears as §§ 25-61-1 et seq.

Cross References — Provision that the board of trustees of a community hospital shall comply with this section, see § 41-13-35.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

ATTORNEY GENERAL OPINIONS

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under

Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. Lamar, Dec. 16, 2005, A.G. Op. 05-0595.

§ 41-9-69. Period of retention of hospital records.

(1) Hospital records shall be retained, preserved and properly stored by hospitals for such periods of reasonable duration as may be prescribed in rules and regulations adopted by the licensing agency. Such rules and regulations may provide for different periods of such retention for the various constituent parts of any hospital records, and such rules and regulations may require that an abstract be made of pertinent data from any hospital records that may be retired as provided herein. Such rules and regulations may also provide for different periods of such retention for the various injuries, diseases, infirmities or conditions primarily causing or associated with the hospitalization. However, complete hospital records shall be retained for a period after discharge of the patient of at least (a) seven (7) years in cases of patients discharged at death, except as may be otherwise hereinafter provided; (b) ten (10) years in cases of adult patients of sound mind at the time of discharge, except as may be otherwise hereinafter provided; (c) for the period of minority or other known disability of the patient plus seven (7) additional years, but not to exceed twenty-eight (28) years, in cases of patients under disability of minority or otherwise; or (d) for the period of minority or other known disability of any survivors hereinafter mentioned plus seven (7) additional years, but not to exceed twenty-eight (28) years, in all cases where the patient was discharged at death, or is known by the hospital to have died within thirty (30) days after discharge, and the hospital knows or has reason to believe that such patient or former patient left one or more survivors under disability of minority or otherwise who are or are claimed to be entitled to damages for wrongful death of the patient under Section 11-7-13, or laws amendatory thereof. Upon the expiration of the applicable period of retention, any hospital may retire the hospital record.

(2) X-ray film and any other graphic data may be retired four (4) years after the date of exposure of the X-ray film or creation of the graphic data if the written and signed findings of a radiologist who has read such X-ray film or other professional who has interpreted such graphic data are retained for the same period as other hospital records under the preceding subsection. However, before X-ray film or graphic data is retired, the signature of the patient or his

representative consenting to the retirement of X-rays or graphic data shall be on file, or the hospital, by certified letter, return receipt requested, shall advise the patient or his representative of its intent to retire the X-ray film or graphic data. The letter shall be mailed to the last known address of the patient or the patient's representative as reflected in the hospital's records. The patient or his representative shall have sixty (60) days from the date of the hospital's letter to request in writing that the X-ray film or graphic data be maintained by the hospital for the same period as hospital records under the preceding subsection. If such request is received by the hospital within sixty (60) days from the date of its letter, the hospital shall abide by such request. Otherwise, the hospital may retire such X-ray film or graphic data as it chooses.

SOURCES: Codes, 1942, § 7146-54; Laws, 1962, ch. 411, § 4; Laws, 1973, ch. 301, § 1; Laws, 1981, ch. 450, § 1; Laws, 1990, ch. 369, § 1; Laws, 1991, ch. 380, § 1, eff from and after July 1, 1991.

Cross References — Early retirement of records with consent of patient and physician, see § 41-9-71.

Extension of period of retention of records, see § 41-9-73.

ATTORNEY GENERAL OPINIONS

Because in-house treatment is provided by some regional health centers, such centers must fulfill statutory record retention requirements dealing with hospital records. Oakes, May 21, 1992, A.G. Op. #92-0257.

Section 41-9-69 does not regulate the retention of records by county health departments. Section 25-59-21 would govern the retention and destruction of these records. Thompson, October 18, 1995, A.G. Op. #95-0674.

§ 41-9-71. Early retirement of hospital records on consent of patient and physician.

Any hospital may, in its discretion, retire any hospital record or part thereof prior to the expiration of the period of retention established in Section 41-9-69 upon the written consent of the patient involved, if he be an adult and of sound mind, and the consent of the attending physician, if he be alive. If the attending physician be not alive, such records or part thereof may be so retired upon the written consent of such patient. However, in no event shall any consent be valid if given within one (1) year from the date of discharge.

SOURCES: Codes, 1942, § 7146-55; Laws, 1962, ch. 411, § 5, eff 60 days from and after passage (approved March 28, 1962).

Cross References — Period of retention of records, see § 41-9-69.

§ 41-9-73. Retention of hospital records for longer periods.

Any hospital may retain, preserve and store hospital records for such longer periods as in its discretion it may find proper or as may be required by any court of competent jurisdiction.

SOURCES: Codes, 1942, § 7146-56; Laws, 1962, ch. 411, § 6, eff 60 days from and after passage (approved March 28, 1962).

Cross References — Period of retention of records, see § 41-9-69.

§ 41-9-75. Abstracts of hospital records; destruction of originals.

Upon retirement of any hospital record or part thereof, the hospital shall cause an abstract to be made of any pertinent data where so required by the rules and regulations of the licensing agency, or as the hospital in its discretion may find proper. The hospital record or part thereof so retired shall be destroyed or otherwise disposed of by burning, shredding or other effective method in keeping with the confidential nature of its contents.

SOURCES: Codes, 1942, § 7146-57; Laws, 1962, ch. 411, § 7; Laws, 1981, ch. 450, § 2, eff from and after July 1, 1981.

§ 41-9-77. Reproduction of hospital records.

Any hospital may, in its discretion, cause any hospital record or part thereof to be reproduced on film or in any other acceptable form of medium, as determined by the licensing agency, which shall include, but not be limited to, microfilming, photographing, photostating, storage on optical disks, or any other form of electronic or digital media. After the records have been reproduced, the hospital may retire the original documents so reproduced. Any such reproduction or copy of an original hospital record or part thereof shall be deemed to be the original hospital record or part thereof for all purposes, shall be subject to retention and retirement as provided in Sections 41-9-69 through 41-9-73, and shall be admissible as evidence in all courts or administrative agencies to the same extent as the original would be or would have been admissible. A facsimile, exemplification or copy of the reproduction or copy shall be deemed to be a transcript, exemplification or copy of the original hospital record or part thereof. However, no state hospital shall undertake that reproduction or destruction of records except as provided in Section 25-59-1 et seq. No other public hospital shall undertake that reproduction unless the expense for it has been provided for in the annual budget, or an amendment to the budget, approved for that public hospital.

SOURCES: Codes, 1942, § 7146-58; Laws, 1962, ch. 411, § 8; Laws, 1991, ch. 446, § 1; Laws, 2009, ch. 325, § 1; Laws, 2009, ch. 407, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 407, Laws of 2009, effective from and after July 1, 2009 (approved March 18, 2009), amended this section. Section 1 of ch. 325, Laws of 2009, effective from and after July 1, 2009 (approved March 11, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 407, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the

amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2009 amendment (ch. 325), added “or any other form of electronic or digital media” at the end of the first sentence.

The second 2009 amendment (ch. 407) added “or any other form of electronic or digital media” to the end of the first sentence; substituted “or an amendment to the budget” for “or an amendment thereof” near the end of the last sentence; and made minor stylistic changes throughout.

Cross References — Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Disposition of records on closing of hospital, see § 41-9-79.

Reproduction of business records, see § 41-9-81.

RESEARCH REFERENCES

ALR. Admissibility of hospital record relating to intoxication or sobriety of patient. 38 A.L.R.2d 778.

Admissibility of hospital record relating to cause or circumstances of accident or incident in which patient sustained injury. 44 A.L.R.2d 553.

Admissibility of hospital record relating to physician's opinion as to whether patient is malingering or feigning injury. 55 A.L.R.2d 1031.

Admissibility in civil action of electroencephalogram, electrocardiogram, or other record made by instrument used in medical test, or of report based upon such test. 66 A.L.R.2d 536.

Photographic representation or photostat of writing as primary or secondary evidence within best evidence rule. 76 A.L.R.2d 1356.

§ 41-9-79. Disposition of hospital records on closing of hospital.

If any hospital shall be finally closed, its hospital records may be delivered and turned over to any other hospital or hospitals in the vicinity willing to accept and retain the same as provided for in Section 41-9-69. If there be no such other hospital, the closing hospital shall deliver its hospital records, in good order and properly indexed for convenient reference, to the licensing agency, which shall store, retain, retire and provide access to the information therein in the same manner as is provided for by hospitals. In its discretion, the licensing agency may also exercise like authority, and to the same effect, with respect to reproduction of such hospital records as is conferred on state hospitals by Section 41-9-77.

SOURCES: Codes, 1942, § 7146-60; Laws, 1962, ch. 411, § 10, eff 60 days from and after passage (approved March 28, 1962).

§ 41-9-81. Business records of hospitals.

The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, shall have the power and authority, in its discretion, to retire and destroy any of the following business records of the hospital at any time three (3) years after the

respective dates that the same are prepared, made, received, executed, acted on or otherwise completed: intrahospital requisitions; inventory records of expendable supplies; temporary records pertaining to patients' charges; department reports; paid invoices; purchase orders; and similar documents of temporary use and value.

In addition to the foregoing, whenever any business records which are required by law to be preserved and retained for indefinite periods, or which are necessary or desirable on the basis of sound business practices to be preserved or retained, shall have been so retained and preserved for a period of six (6) years, the commissioners or board of trustees of any such hospital shall have the power and authority, in its discretion, to retire and destroy the same. However, nothing contained herein shall authorize the retirement, destruction or disposal of any business records containing or consisting of minutes or minute books; bylaws or rules and regulations; general ledgers; disbursement registers or journals; cash receipts registers; maintenance and investment accounts; inventory records; ledger cards, sheets or other records of unpaid accounts receivable; other evidence of unpaid indebtedness; budgets; audit reports; licenses or permits; abstracts or certificates of title; geological reports; engineering or architectural plans, specifications or drawings; or any other business records which are otherwise required by law, order or decree of any court of competent jurisdiction, applicable rules and regulations or sound business practices to be retained permanently or for longer periods than six (6) years.

Except as otherwise provided by law, order or decree of any court of competent jurisdiction, or applicable rules and regulations, any privately owned and operated hospital may retire any business records at such times as in its judgment may conform to sound business practices and the reasonable accommodation of other interested parties.

Any hospital may, in its discretion, and at any time, cause any part of its business records to be reproduced in like manner and with like effect as provided in Section 41-9-77 with respect to hospital records. However, this shall not be construed to permit the destruction, retirement or earlier retirement of any business record which is otherwise prohibited or deferred by this section.

SOURCES: Codes, 1942, § 7146-61; Laws, 1962, ch. 411, § 11; Laws, 1966, ch. 462, § 1; Laws, 1991, ch. 446, § 2, eff from and after July 1, 1991.

Cross References — Reproduction of hospital records, see § 41-9-77.

§ 41-9-83. Violations; civil liability.

Willful violation of the provisions of Sections 41-9-61 through 41-9-83 shall constitute a misdemeanor and shall be punishable as provided for by law. No hospital, its officers, employees or medical and nursing personnel practicing therein, shall be civilly liable for violation of said sections except to the extent of liability for actual damages in a civil action for willful or reckless and

wanton acts or omissions constituting such violation. Such liability shall be subject, however, to any immunities or limitations of liability or damages provided by law.

SOURCES: Codes, 1942, § 7146-62; Laws, 1962, ch. 411, § 12, eff 60 days from and after passage (approved March 28, 1962).

Cross References — Penalty where none fixed elsewhere by statute, see § 99-19-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

RESEARCH REFERENCES

ALR. Locality rule as governing hospital's standard of care to patient and expert's competency to testify thereto. 36 A.L.R.3d 440.

HOSPITAL RECORDS — USE IN TRIALS AND ADMINISTRATIVE HEARINGS

SEC.

- 41-9-101. Definitions.
- 41-9-103. Furnishing copies of records in compliance with subpoenas.
- 41-9-105. Sealing, identification and direction of copies.
- 41-9-107. Opening of sealed envelopes.
- 41-9-109. Affidavit of custodian as to copies; charges.
- 41-9-111. Repealed.
- 41-9-113. Obtaining personal attendance of custodian.
- 41-9-115. Obtaining personal attendance of custodian and production of original record.
- 41-9-117. Substitution of copies after introduction of records into evidence.
- 41-9-119. Evidence of reasonableness of medical expenses.

§ 41-9-101. Definitions.

As used in Sections 41-9-101 through 41-9-119, the following terms shall have the respective meanings ascribed to them:

(a) "Records" shall mean and include "hospital records" as defined in Section 41-9-61; however, a subpoena duces tecum for records shall not be deemed to include X-rays, electrocardiograms and like graphic matter unless specifically referred to in the subpoena; and

(b) "Custodian" shall mean and include the health information administrator or registered health information technician and the administrator or other chief officer of a duly licensed hospital in this state and its proprietor, as well as their deputies and assistants, and any other persons who are official custodians or depositories of records. The custodian shall abide, in all respects, to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), notwithstanding any other state statute.

SOURCES: Codes, 1942, § 7146.3-01; Laws, 1971, ch. 375, § 1; Laws, 2005, ch. 342, § 1, eff from and after July 1, 2005.

Cross References — Regulation of hospitals, see §§ 41-9-1 et seq.

Preparation, preservation and disposition of hospital records, see §§ 41-9-61 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Federal Aspects — Federal Health Insurance Portability and Accountability Act of 1996, see 42 USCS §§ 1320d et seq.

JUDICIAL DECISIONS

1. In general.

The privileged communications statute does not preclude testimony from and concerning a patient's hospital records, by

doctors who had never seen or examined the patient. *Reynolds v. West*, 237 Miss. 613, 115 So. 2d 742 (1959).

RESEARCH REFERENCES

ALR. Admissibility under business entry statutes of hospital records in criminal cases. 69 A.L.R.3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting physician to treating physician. 69 A.L.R.3d 104.

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Captions, Prayers, and Formal Parts, Form 779 (for discovery — clause — oral and physical examination of plaintiff — for examination of hospital records).

6 Am. Jur. Proof of Facts, Hospital Records, Proof No. 2 (foundation for admission of records required by statute to be kept).

22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

5 Am. Jur. Trials, Introducing and Marking Exhibits, §§ 21, 22.

6 Am. Jur. Trials, Basis of Medical Testimony, § 29.

15 Am. Jur. Trials, Discovery and Evaluation of Medical Records, §§ 1 et seq.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 24:16.

§ 41-9-103. Furnishing copies of records in compliance with subpoenas.

Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any hospital duly licensed under the laws of this state in an action or proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpoena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, on or before the time specified in the subpoena duces tecum, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a

facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

SOURCES: Codes, 1942, § 7146.3-02; Laws, 1971, ch. 375, § 2, eff from and after passage (approved March 16, 1971).

Cross References — Subpoena duces tecum, see § 11-1-51.

Licensing of hospitals, see § 41-9-11.

Reproductions and copies of hospital records, see § 41-9-77.

Affidavit of custodian, see § 41-9-109.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

Although the defendant, charged with manslaughter, procured the issuance of a subpoena duces tecum to custodian of records of the University of Mississippi Medical Center Hospital as required by Code 1942, § 7146.3-02, where the affidavit setting forth the various criteria con-

tained in Code 1942, § 7126.3-05 was not supplied and the defendant failed to state for what purpose the introduction of these records would serve, or otherwise establish their relevance, they were properly excluded as evidence by the trial court. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

The privileged communications statute does not preclude testimony from and concerning a patient's hospital records, by doctors who had never seen or examined the patient. *Reynolds v. West*, 237 Miss. 613, 115 So. 2d 742 (1959).

RESEARCH REFERENCES

ALR. Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Medical malpractice; presumption or inference from failure of hospital or doctor to produce relevant medical records. 69 A.L.R.4th 906.

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-105. Sealing, identification and direction of copies.

The copy of the records shall be separately enclosed in an inner-envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed thereon. The sealed envelope or wrapper shall then be enclosed in an outer-envelope or wrapper, sealed, and directed as follows:

If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof; if the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body or tribunal conducting the hearing, at a like address.

SOURCES: Codes, 1942, § 1746.3-03; Laws, 1971, ch. 375, § 3, eff from and after passage (approved March 16, 1971).

Cross References — Accompanying affidavit of custodian, see § 41-9-109.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital

records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-107. Opening of sealed envelopes.

Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, court, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner-envelope or wrapper be opened, the judge, court, officer, body, or tribunal shall first ascertain that either (1) the records have been subpoenaed at the instance of the patient involved or his counsel of record, or (2) the patient involved or someone authorized in his behalf to do so for him has consented thereto and waived any privilege of confidence involved. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

The provisions of this section shall not apply in (a) a Workers' Compensation proceeding if the pertinent record is the record of the claimant therein or a claimant's decedent; or (b) physician or podiatrist disciplinary proceedings pursuant to Sections 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through 73-25-95 or 73-27-1 through 73-27-19, Mississippi Code of 1972.

SOURCES: Codes, 1942, §§ 7146.3-04, 7146.3-09; Laws, 1971, ch. 375, §§ 4, 9; Laws, 1987, ch. 500, § 3, eff from and after July 1, 1987.

Cross References — Privileged communications, see § 13-1-21.

Admissibility of copies of hospital records, see § 41-9-77.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital

records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-109. Affidavit of custodian as to copies; charges.

The records shall be accompanied by an affidavit of a custodian stating in substance: (a) that the affiant is a duly authorized custodian of the records and has authority to certify said records, (b) that the copy is a true copy of all the records described in the subpoena, (c) that the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event reported therein, and (d) certifying the amount of the reasonable charges of the hospital for furnishing such copies of the record. If the hospital has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner described in Sections 41-9-103, 41-9-105. The filing of such affidavit with respect to reasonable charges shall be sufficient proof of such expense, which shall be taxed as costs of court.

SOURCES: Codes, 1942, § 7146.3-05; Laws, 1971, ch. 375, § 5, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

Although the defendant, charged with manslaughter, procured the issuance of a subpoena duces tecum to custodian of records of the University of Mississippi

Medical Center Hospital as required by Code 1942, § 7146.3-02, where the affidavit setting forth the various criteria contained in Code 1942, § 7126.3-05 was not supplied and the defendant failed to state for what purpose the introduction of these records would serve, or otherwise establish their relevance, they were properly excluded as evidence by the trial court. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-111. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991. [Codes, 1942, § 7146.3-06; Laws, 1971, ch. 375, § 6]

Editor's Note — Former § 41-9-111 pertained to the admissibility of copies and affidavits.

§ 41-9-113. Obtaining personal attendance of custodian.

The personal attendance of the custodian shall be required if the subpoena duces tecum contains a clause which reads:

"The procedure authorized pursuant to Section 41-9-103 will not be deemed sufficient compliance with this subpoena."

SOURCES: Codes, 1942, § 7146.3-07; Laws, 1971, ch. 375, § 7, eff from and after passage (approved March 16, 1971).

Cross References — Subpoena duces tecum, see § 11-1-51.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital

records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

Practice References. Young, Trial Handbook for Mississippi Lawyers § 24:16.

§ 41-9-115. Obtaining personal attendance of custodian and production of original record.

The personal attendance of the custodian and the production of the original record shall be required if the subpoena duces tecum contains a clause which reads:

"Original records are required, and the procedure authorized pursuant to Section 41-9-103 will not be deemed sufficient compliance with this subpoena."

SOURCES: Codes, 1942, § 7146.3-08; Laws, 1971, ch. 375, § 8, eff from and after passage (approved March 16, 1971).

Cross References — Subpoena duces tecum, see § 11-1-51.

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital

records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-117. Substitution of copies after introduction of records into evidence.

In view of the property right of the hospital in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body, or tribunal conducting the hearing. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

SOURCES: Codes, 1942, § 7146.3-08; Laws, 1971, ch. 375, § 8, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

1. In general.

The procedure for the acquisition, identification and admission of hospital

records is set forth in Code 1942, §§ 7146.3-02 to 7146.3-08. *Jolly v. State*, 269 So. 2d 650 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

§ 41-9-119. Evidence of reasonableness of medical expenses.

Proof that medical, hospital, and doctor bills were paid or incurred because of any illness, disease, or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable.

SOURCES: Codes, 1942, § 7146.3-10; Laws, 1971, ch. 375, § 10, eff from and after passage (approved March 16, 1971).

JUDICIAL DECISIONS

1. In general.
2. Rebuttal of reasonableness and necessity.

1. In general.

Although Miss. Code Ann. § 41-9-119 creates a presumption that proof of medical bills acts as prima facie evidence of their reasonableness and necessity, the presumption is rebuttable and the ultimate determination is for the finder of fact to make. Additionally, a finding that medical bills are reasonable and necessary does not equate to a finding that those bills were incurred as a result of a defendant's negligence. *Callahan v. Ledbetter*, 992 So. 2d 1220 (Miss. Ct. App. 2008).

In the father's petition to clarify his child support obligations, the chancellor's finding that counseling for his sons was not medically necessary was appropriate even though the mother had submitted the bill into evidence because the father further established that the boys only went to counseling one time and that the doctor did not order any follow-up treatment. *Wilkerson v. Wilkerson*, 955 So. 2d 903 (Miss. Ct. App. 2007).

In an insurance dispute, the insurer's motion in limine to prohibit the introduction of plaintiff's unauthenticated medical records was denied because plaintiff, who would testify as to the authenticity of the records, was able to make a showing that would allow the jury to conclude that her medical bills and records were authentic. *Simpson v. Econ. Premier Assur. Co.*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

Miss. Code Ann. § 41-9-119 dictated that the decedent's medical bills were prima facie evidence of their necessity and reasonableness, and the opposing party may rebut the necessity and reasonableness of the bills, thereby leaving the ultimate determination to the jury; in light of the medical testimony, the appellate court did not agree that the verdict regarding the medical bills was the product of bias and passion, and denied additur to the

estate administrator. In re *Estate of Guillory v. McGee*, 922 So. 2d 823 (Miss. Ct. App. 2006).

Miss. Code Ann. § 41-9-119 is widely used in state court proceedings to permit the authentication of medical records; while the statute deals, on its face, with the evidentiary weight to be given to the evidence, it is often used to authenticate evidence as well. *Simpson v. Econ. Premier Assur. Co.*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 64603 (N.D. Miss. Sept. 8, 2006).

Miss. Code Ann. § 41-9-119 does not require evidence of reasonableness of medical expenses before medical bills become admissible; therefore, a trial court erred by holding that an insurer was required to have doctors testify as to the reasonableness of certain expenses prior to admitting them into evidence. *Alfa Mut. Ins. Co. v. Cascio*, 909 So. 2d 174 (Miss. Ct. App. 2005).

Trial court did not err in refusing to allow plaintiff to testify concerning her medical bills pursuant to Miss. Code Ann. § 41-9-119 because plaintiff's daughter was treated for diabetes and other medical conditions unrelated to an allegedly negligent intubation, and would have incurred most of the medical bills at issue regardless of any negligence by the doctor or hospital. *Kent v. Baptist Mem'l Hosp. - N. Miss., Inc.*, 853 So. 2d 873 (Miss. Ct. App. 2003).

An award of zero damages in a motor vehicle accident case was affirmed since, even if proof that the plaintiff incurred medical bills was prima facie evidence that the bills were necessary and reasonable, the statute did not mandate a finding that those medical bills were incurred as a result of the accident in question. *Herring v. Poirrier*, 797 So. 2d 797 (Miss. 2000).

In order for a claimant to introduce evidence to support a claim against an estate for medical expenses upon contest, the claimant may proceed under § 41-9-119, but to do this, he or she must be

allowed to go into court to present the bills incurred and to testify for what purpose they were incurred. Since a summary judgment, by its nature, disposes of a case before a trial is commenced, summary judgment practice under Rule 56, Miss. R. Civ. P. is inapplicable in contests of probated claims because it is inconsistent with the statutory procedure which necessitates that a claimant enter court to introduce evidence in support of his or her claim and permits a personal representative to rebut the claim. Thus, the procedure for summary judgment is not applicable to dispose of claims made under § 91-7-149. *Biloxi Regional Medical Ctr., Inc. v. Estate of Ross*, 546 So. 2d 667 (Miss. 1989).

Documents were properly admitted into evidence which provided proof of expenses incurred as result of treatment for injuries sustained in accident, where documents submitted gave general descriptions of services necessitating fees. *Stratton v. Webb*, 513 So. 2d 587 (Miss. 1987).

Bills and prescription receipts evidencing charges made for medical and dental treatment furnished to children provide prima facie showing, in accordance with § 41-9-119, in child support proceeding, that medical and dental expenses represented by bills are reasonable in amount and were necessarily incurred. *Clements v. Young*, 481 So. 2d 263 (Miss. 1985).

Any medical or dental condition, present at birth or thereafter caused, is "illness, disease or injury" within meaning of § 41-9-119. *Clements v. Young*, 481 So. 2d 263 (Miss. 1985).

Under § 41-9-119, when a party takes the witness stand, exhibits bills for examination by the court, and testifies that the bills were incurred as a result of the injuries complained of, they become prima facie evidence that the bills so paid or incurred were necessary and reasonable; however, the opposing party may, if desired, rebut the necessity and reasonableness of the bills by proper evidence and the ultimate question is then for the jury to determine. *Jackson v. Brumfield*, 458 So. 2d 736 (Miss. 1984).

2. Rebuttal of reasonableness and necessity.

Under Miss. Code Ann. § 41-9-119, when plaintiff customer took the witness

stand and exhibited his medical bills for examination by the court and testified that they were incurred as a result of the injuries complained of, they became prima facie evidence and triggered the presumption that the bills so paid or incurred were necessary and reasonable; however, defendant restaurant operator could have, if it so desired, rebutted the necessity and reasonableness of the bills by proper evidence. Because Miss. Code Ann. § 41-9-119, via Fed. R. Evid. 302, applied in this case, the customer's medical bills were properly admitted. *Foradori v. Harris*, 523 F.3d 477 (5th Cir. 2008).

In a personal injury case, the court properly denied plaintiff's request for additur because she did not conclusively prove that the medical bills in question were incurred as a result of her injury; the only bills that were uncontested were those that plaintiff incurred immediately after the accident, which related to bruises to her knees and other minor injuries, and virtually every other injury, both physical and mental, was strongly contested by the defendants' expert witnesses and other evidence. *Walker v. Gann*, 955 So. 2d 920 (Miss. Ct. App. 2007).

Husband's proof that he had paid or incurred medical, hospital, and doctor bills because of injury he sustained when catheter guide wire broke off in his artery while the doctor was performing surgery was prima facie evidence that such bills were necessary and reasonable and the doctor did not overcome such evidence with his own evidence that the bills incurred were not reasonable and necessary. *Purdon v. Locke*, 807 So. 2d 373 (Miss. 2001).

Notwithstanding the statute, an opposing party may rebut the necessity and reasonableness of medical bills and the ultimate question is for the jury to determine. *Herring v. Poirrier*, 797 So. 2d 797 (Miss. 2000).

The defendant failed to rebut the reasonableness and necessity of the plaintiff's medical bills, where she offered no evidence and chose instead to rely upon her argument that she impeached both the plaintiff's and the plaintiff's physician's testimony; while notations in the

medical records may have cast doubt on the extent of the plaintiff's pain and suffering, those notations did not invalidate

the necessity of the medical treatment. *Hubbard v. Canterbury*, 805 So. 2d 545 (Miss. Ct. App. 2000).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Proof of Facts 2d 1, Medical Malpractice — Use of Hospital Records.

38 Am. Jur. Proof of Facts 2d 145, Foundation for Admissibility of Hospital Records and X-rays.

36 Am. Jur. Trials 695, Obtaining, Organizing and Abstracting Medical Records for Use in a Lawsuit.

RURAL HOSPITAL FLEXIBILITY ACT

SEC.

- 41-9-201. Short title.
- 41-9-203. State policy.
- 41-9-205. Definitions.
- 41-9-207. State rural health-care plan.
- 41-9-209. Designation as a critical access hospital.
- 41-9-210. Critical access hospitals authorized to bank licensed hospital acute care beds; banked beds may be relicensed without certificate of need.
- 41-9-211. Formation of a rural health network not subject to antitrust laws.
- 41-9-213. Rules and regulations.
- 41-9-215. Insurance and other coverage to provide benefits for services performed by critical access hospitals.
- 41-9-217. Additional personnel.

§ 41-9-201. Short title.

This article is entitled and may be cited as the Mississippi Rural Hospital Flexibility Act of 1998.

SOURCES: Laws, 1998, ch. 476, § 1, eff from and after passage (approved March 26, 1998).

§ 41-9-203. State policy.

It is the policy of the State of Mississippi to provide improved access to hospital and other health services for rural residents of the State of Mississippi and to promote regionalization of rural health services in Mississippi.

SOURCES: Laws, 1998, ch. 476, § 2, eff from and after passage (approved March 26, 1998).

§ 41-9-205. Definitions.

When used in this article, the following definitions shall apply, unless the context indicates otherwise:

- (a) "Act" means the Mississippi Rural Hospital Flexibility Act of 1998.

(b) "Critical access hospital" means a hospital which has been designated as a critical access hospital by the department in accordance with the Medicare Rural Hospital Flexibility Program, as provided for in Section 4201 of the Balanced Budget Act of 1997, Public Law 105-33, and which has entered into an agreement with at least one (1) full-service hospital to form a rural health network. The agreement or agreements must include provisions regarding patient referral and transfer, communications and patient transportation. A critical access hospital in a rural health network must also have an agreement for credentialing and quality assurance with at least one (1) hospital that is a member of the rural health network, or with a peer review organization or equivalent entity, or with another appropriate and qualified entity identified in the rural health-care plan for the State of Mississippi.

(c) "Department" means the Department of Health for the State of Mississippi.

(d) "Rural health network" means an organization consisting of at least one (1) critical access hospital and at least one (1) full-service hospital, the members of which have entered into certain agreements regarding patient referral and transfer, the development and use of communications systems and the provision of emergency and nonemergency transportation.

(e) "State rural health-care plan" means Mississippi's rural health-care plan that (i) provides for the creation of one or more rural health networks, consisting of at least one (1) critical access hospital and at least one (1) full-service hospital, (ii) promotes regionalization of rural health services in Mississippi, and (iii) improves access to hospitals and other health services for rural residents of Mississippi.

SOURCES: Laws, 1998, ch. 476, § 3, eff from and after passage (approved March 26, 1998).

Federal Aspects — The Medicare Rural Hospital Flexibility Program, as provided for in § 4201 of the Balanced Budget Act of 1997, Public Law 105-33, is codified at 42 USCS § 1395i-4.

§ 41-9-207. State rural health-care plan.

(1) The department is hereby authorized, in accordance with the Medicare Rural Hospital Flexibility Program, as authorized by Section 4201 of the Balanced Budget Act of 1997, Public Law 105-33, to develop for the State of Mississippi a state rural health-care plan that (a) provides for the creation of one or more rural health networks in Mississippi; (b) promotes regionalization of rural health services in Mississippi; and (c) improves access to hospitals and other health services for rural residents of Mississippi.

(2) The state rural health-care plan shall be developed in consultation with the Mississippi Hospital Association, the Executive Director of the Mississippi Board of Supervisors, or his designee, and rural hospitals located in Mississippi.

(3) In developing the state rural health-care plan, the department shall designate rural nonprofit or public hospitals or facilities located in Mississippi as critical access hospitals, which critical access hospitals must meet the criteria for such designation as set out in Section 4201 of the Balanced Budget Act of 1997.

SOURCES: Laws, 1998, ch. 476, § 4, eff from and after passage (approved March 26, 1998).

Federal Aspects — The Medicare Rural Hospital Flexibility Program, as provided for in § 4201 of the Balanced Budget Act of 1997, Public Law 105-33, is codified at 42 USCS § 1395i-4.

§ 41-9-209. Designation as a critical access hospital.

Any hospital is authorized to seek designation as a critical access hospital. Subject to federal law, there shall be no requirement or limitation regarding the distance that a critical access hospital must be located from another hospital. The bed-size limit for a critical access hospital is twenty-five (25) operational acute care beds, and the average maximum length of stay for patients in a critical access hospital is ninety-six (96) hours, unless a longer period is required because of inclement weather or other emergency conditions. In the event the critical access hospital is a swing bed facility, any of the twenty-five (25) acute care beds allowed in a critical access hospital may be used for the provision of extended care services or acute care inpatient services so long as the furnishing of such services does not exceed twenty-five (25) beds and so long as the hospital does not seek Medicaid reimbursement for more than fifteen (15) acute care inpatient beds. A critical access hospital (a) must make available twenty-four-hour emergency care services, as described in the state rural health-care plan, for ensuring access to emergency care services in the rural area served by the critical access hospital, and (b) must be a member of a rural health network. Any hospital that has a distinct-part skilled nursing facility, certified under Title XVIII of the federal Social Security Act, at the time it applies for designation as a critical access hospital, may continue its operation of the distinct-part skilled nursing facility and is not required to count the beds in the distinct-part skilled nursing facility for purposes of the allowed twenty-five (25) acute care inpatient beds. To the extent permitted under Section 41-7-171 et seq., a critical access hospital may establish a distinct-part psychiatric unit and a distinct-part rehabilitation unit, each of which must be certified under Title XVIII of the federal Social Security Act and each of which may consist of no more than ten (10) beds. No bed in the critical access hospital's distinct-part psychiatric unit or distinct-part rehabilitation unit shall be counted for purposes of the twenty-five (25) bed limitation. Each distinct-part unit in a critical access hospital must comply with all applicable state licensure laws and federal certification laws.

SOURCES: Laws, 1998, ch. 476, § 5; Laws, 2004, ch. 329, § 1, eff from and after July 1, 2004.

Federal Aspects — Title XVIII of the federal Social Security Act is codified at 42 USCS §§ 1395 et seq.

§ 41-9-210. Critical access hospitals authorized to bank licensed hospital acute care beds; banked beds may be relicensed without certificate of need.

If a hospital seeks a new license from the department in order to be designated as a critical access hospital, the department shall maintain a record of the acute care beds of that hospital that have been delicensed as a result of that designation and continue counting those beds as part of the state's total acute care bed count for health care planning purposes. If a critical access hospital later desires to relicense some or all of its delicensed acute care beds, it shall notify the department of its intent to increase the number of its licensed acute care beds. The department shall survey the hospital within thirty (30) days of that notice and, if appropriate, issue the hospital a new license reflecting the new contingent of beds. That change may be accomplished without the need of the hospital to seek certificate of need approval under Section 41-7-171 et seq. However, in no event may a hospital that has delicensed some of its acute care beds in order to be designated as a critical access hospital be reissued a license to operate acute care beds in excess of its acute care bed count before the delicensure of some of its beds without seeking certificate of need approval.

This section shall apply to all hospitals that are designated as critical access hospitals on July 1, 2003, and all hospitals that may become designated as critical access hospitals after July 1, 2003.

SOURCES: Laws, 2003, ch. 393, § 1, eff from and after July 1, 2003.

Cross References — Activities for which a certificate of need is required, see § 41-7-191.

§ 41-9-211. Formation of a rural health network not subject to antitrust laws.

In forming an integrated network and in contracting for services, members of a rural health network and officers, agents, representatives, employees and directors of any member thereof shall be considered to be acting pursuant to clearly expressed state policy as established in Sections 41-9-201 through 41-9-217 under the supervision of the State of Mississippi and shall not be subject to state or federal antitrust laws while so acting.

SOURCES: Laws, 1998, ch. 476, § 6, eff from and after passage (approved March 26, 1998).

§ 41-9-213. Rules and regulations.

The department shall adopt, in accordance with Section 25-43-1 et seq., Mississippi Code of 1972, rules and regulations for the establishment and

operation of rural health networks, including the designation of critical access hospitals of rural areas and minimum standards, as necessary, for such critical access hospitals.

SOURCES: Laws, 1998, ch. 476, § 7, eff from and after passage (approved March 26, 1998).

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 41-9-215. Insurance and other coverage to provide benefits for services performed by critical access hospitals.

Each individual and group policy of accident and sickness insurance, each contract issued by health maintenance organizations, and all coverage maintained by an entity authorized under any article of Chapter 41, Title 83 of the Mississippi Code of 1972, shall provide benefits for services when performed by a critical access hospital if such services would be covered under such policies or contracts if performed by a full-service hospital.

SOURCES: Laws, 1998, ch. 476, § 8, eff from and after passage (approved March 26, 1998).

§ 41-9-217. Additional personnel.

The department is hereby authorized to hire additional personnel to implement Sections 41-9-201 through 41-9-217 pursuant to specific appropriations to the department for such purposes.

SOURCES: Laws, 1998, ch. 476, § 9, eff from and after passage (approved March 26, 1998).

RURAL HEALTH AVAILABILITY ACT

SEC.

- 41-9-301. Short title.
- 41-9-303. Legislative findings.
- 41-9-305. Definitions.
- 41-9-307. Cooperative agreements; application for certificate of public advantage; issuance of certificate; monitoring; revocation of certificate; termination or withdrawal from agreement; amendment of agreement; regulations.
- 41-9-309. Judicial review.
- 41-9-311. Certificates of need.

§ 41-9-301. Short title.

Sections 41-9-301 through 41-9-311 shall be known and may be cited as the "Rural Health Availability Act."

SOURCES: Laws, 2004, ch. 462, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. “Sections 41-9-301 through 41-9-311” was substituted for “this act.”

§ 41-9-303. Legislative findings.

The Legislature finds and declares the following:

(a) In rural areas, access to health care is limited and the quality of health care is adversely affected by inadequate reimbursement and collection rates and difficulty in recruiting and retaining skilled health professionals.

(b) There is limited, if any, overlap in the geographic service areas of Mississippi rural hospitals.

(c) Rural hospitals’ financial stability is threatened by patient migration to general acute care and specialty hospitals in urban areas.

(d) The availability of quality health care in rural areas is essential to the economic and social viability of rural communities.

(e) Cooperative agreements among rural hospitals would improve the availability and quality of health care for Mississippians in rural areas and enhance the likelihood that rural hospitals can remain open.

SOURCES: Laws, 2004, ch. 462, § 2, eff from and after July 1, 2004.

§ 41-9-305. Definitions.

For the purposes of Sections 41-9-301 through 41-9-311, the following terms shall have the following meanings:

(a) “Act” means the Rural Health Availability Act.

(b) “Affected person,” with respect to any application for a certificate of public advantage, means:

(i) The applicant(s);

(ii) Any person residing within the geographic service area of an applicant;

(iii) Health-care purchasers who reimburse health-care facilities located in the geographic service area of an applicant;

(iv) Any other person furnishing goods or services to, or in competition with, an applicant; or

(v) Any other person who has notified the department in writing of his interest in applications for certificates of public advantage and has a direct economic interest in the decision.

Notwithstanding the foregoing, persons from other states who would otherwise be considered “affected persons” are not included, unless that other state provides for similar involvement of persons from Mississippi in a similar process in that state.

(c) “Board” means the State Board of Health established under Section 41-3-1.

(d) "Certificate of public advantage" means the formal written approval, including any conditions or modifications of a cooperative agreement by the department.

(e) "Cooperative agreement" means a contract, business or financial arrangement, or any other activities or practices among two (2) or more rural hospitals for the sharing, allocation, or referral of patients; the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment or other health-care services; the acquisition or merger of assets among or by two (2) or more rural hospitals, including agreements to negotiate jointly with respect to price or other competitive terms with suppliers. The term "cooperative agreement" includes any amendments thereto with respect to which a certificate of public advantage has been issued or applied for or with respect to which a certificate of public advantage is not required, unless the context clearly requires otherwise.

(f) "Department" means the State Department of Health created under Section 41-3-15.

(g) "Hospital" has the meaning set forth in Section 41-9-3.

(h) "Rural area" means an area with a population density of less than one hundred (100) individuals per square mile; a municipality or county with a population of less than seven thousand five hundred (7,500) individuals; or an area defined by the most recent United States Census as rural.

(i) "Rural hospital" means a private or community hospital having at least one (1) but no more than seventy-five (75) licensed acute-care beds that is located in a rural area.

(j) "State" means the State of Mississippi.

(k) "State Health Officer" means the State Health Officer elected by the State Board of Health under Section 41-3-5.

The use of a singular term in this section includes the plural of that term, and the use of a plural term in this section includes the singular of that term, unless the context clearly requires another connotation.

SOURCES: Laws, 2004, ch. 462, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-9-301 through 41-9-311" was substituted for "this act" in the introductory language.

§ 41-9-307. Cooperative agreements; application for certificate of public advantage; issuance of certificate; monitoring; revocation of certificate; termination or withdrawal from agreement; amendment of agreement; regulations.

(1) A rural hospital and any corporation, partnership, joint venture or any other entity, all of whose principals are rural hospitals, may negotiate and enter into cooperative agreements with other such persons in the state, subject

to receipt of a certificate of public advantage governing the agreement as provided in this act.

(2) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. Within thirty (30) days of receipt of the application, the department may request additional information as may be necessary to complete the application. The applicant has thirty (30) days from the date of the request to submit the additional information. If the applicant fails to submit the requested information within the thirty-day period, or any extension of time granted by the department, the application is deemed withdrawn. The department may require an application fee from the submitting parties sufficient to cover the cost of processing the application.

(3) The department shall review the application in accordance with the standards set forth in subsection (4) of this section. The department shall give notice of the application to members of the public who reside in the service areas of the applicant hospitals, which may be provided through newspapers of general circulation or public information channels. If requested by an affected person within thirty (30) days of the giving of the public notice, the department may hold a public hearing in accordance with the rules adopted by the board. The department shall grant or deny the application within sixty (60) days after receipt of a completed application or from the date of the public hearing, if one is held, and that decision, along with any conditions of approval, must be in writing and must set forth the basis for the decision. The department may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with the intent of this act and to ensure that the activity is appropriately supervised and regulated by the state. The department shall furnish a copy of the decision to the applicants and any affected persons who have asked in writing to be notified.

(4) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that:

(a) Each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture or other entity all of whose principals are rural hospitals;

(b) The geographic service area of the rural hospitals who are parties to the agreement do not overlap significantly; and

(c) The cooperative agreement is likely to result in one or more of the following benefits:

(i) Enhancement of the quality of hospital and hospital-related care provided to Mississippi citizens;

(ii) Preservation of hospital facilities and health care in rural areas;

(iii) Gains in the cost-efficiency of services provided by the hospitals involved;

- (iv) Encouragement of cost-sharing among the hospitals involved;
- (v) Improvements in the utilization of hospital resources and equipment; or
- (vi) Avoidance or reduction of duplication of hospital resources or expenses, including administrative expenses.

(5) The department shall actively monitor and regulate agreements approved under this act and may request information whenever necessary to ensure that the agreements remain in compliance with the conditions of approval. The department may charge an annual fee to cover the cost of monitoring and regulating these agreements. During the time the certificate is in effect, a report on the activities under the cooperative agreement must be filed with the department every two (2) years. The department shall review the report in order to determine that the cooperative agreement continues to comply with the terms of the certificate of public advantage.

(6) The department shall revoke a certificate of public advantage by giving written notice to each party to a cooperative agreement with respect to which the certificate is being revoked, if it finds that:

(a) The cooperative agreement or activities undertaken by it are not in substantial compliance with the terms of the application or the conditions of approval;

(b) The likely benefits resulting from the cooperative agreement no longer exist; or

(c) The department's approval was obtained as a result of intentional material misrepresentation to the department or as the result of coercion, threats or intimidation toward any party to the cooperative agreement.

(7) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. A party to a cooperative agreement who terminates or withdraws from the agreement shall notify the department within fifteen (15) days of the termination or withdrawal. If all parties terminate their participation in the cooperative agreement, the department shall revoke the certificate of public advantage for the agreement.

(8) The parties to a cooperative agreement with respect to which a certificate of advantage is in effect must notify the department of any proposed amendment to the cooperative agreement, including an amendment to add an additional party but excluding an amendment to remove or to reflect the withdrawal of a party, before the amendment takes effect. The parties must apply to the department for a certificate of public advantage governing the amendment and the department shall consider and rule on the application in accordance with the procedures applicable to cooperative agreements generally.

(9) The department may promulgate rules and regulations in accordance with the Administrative Procedures Law as in effect from time to time to implement the provisions of this act, including any fees and application costs associated with the monitoring and oversight of cooperative agreements approved under this act.

(10) A dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by the principles of contract law or any other applicable law.

SOURCES: Laws, 2004, ch. 462, § 4, eff from and after July 1, 2004.

§ 41-9-309. Judicial review.

Any applicant aggrieved by a decision of the department under this act shall be entitled to judicial review thereof in the Circuit Court of Hinds County, First Judicial District. In the review, the decision of the department shall be affirmed unless it is arbitrary, capricious, or it is not in compliance with this act.

SOURCES: Laws, 2004, ch. 462, § 5, eff from and after July 1, 2004.

§ 41-9-311. Certificates of need.

Nothing in this act exempts hospitals from compliance with the provisions of Section 41-7-171 et seq. concerning certificates of need.

SOURCES: Laws, 2004, ch. 462, § 6, eff from and after July 1, 2004.

CHAPTER 10

Medical Records

SEC.

- 41-10-1. Willful or reckless placement of inaccurate information in patient's record; intentional alteration or destruction of patient's records; penalties.
- 41-10-3. Heirs of decedents authorized to obtain copy of decedent's medical records under certain circumstances; termination of authorization.

§ 41-10-1. Willful or reckless placement of inaccurate information in patient's record; intentional alteration or destruction of patient's records; penalties.

(1) Except as otherwise provided in subsection (3), a person, knowing that the information is misleading or inaccurate, shall not intentionally, willfully or recklessly place or direct another to place in a patient's medical record or chart misleading or inaccurate information regarding the diagnosis, care, treatment or cause of a patient's condition. A violation of this subsection is punishable as follows: a person who intentionally or willfully or recklessly violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year, or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(2) Except as otherwise provided in subsection (3), a person shall not intentionally or willfully alter or destroy or direct another to alter or destroy a patient's medical records or charts for the purpose of concealing his or her responsibility for the patient's injury, sickness or death. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(3) Subsections (1) and (2) do not apply to either of the following:

(a) Destruction of a patient's original medical record or chart if all of the information contained in or on the medical record or chart is otherwise retained by means of mechanical or electronic recording, chemical reproduction, or other equivalent techniques that accurately reproduce all of the information contained in or on the original.

(b) Supplementation of information or correction of an error in a patient's medical record or chart in a manner that reasonably discloses that the supplementation or correction was performed and that does not conceal or alter prior entries.

SOURCES: Laws, 2001, ch. 603, § 12, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

§ 41-10-3. Heirs of decedents authorized to obtain copy of decedent's medical records under certain circumstances; termination of authorization.

(1) The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Heir" means any person who is entitled to a distribution from the estate of an intestate decedent, or a person who would be entitled to a distribution from the estate of a testate decedent if that decedent had died intestate.

(b) "Medical records" means any communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including communications that are prepared by a health-care provider or by other providers. The term does not include (i) materials that are prepared in connection with utilization review, peer review or quality assurance activities, or (ii) recorded telephone and radio communications to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity; however, the term includes communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a patient.

(2) Where no executor or administrator has been appointed by a chancery court of competent jurisdiction regarding the probate or administration of the estate of a decedent, any heir of the decedent shall be authorized to act on behalf of the decedent solely for the purpose of obtaining a copy of the decedent's medical records. The authority shall not extend to any other property rights relating to the decedent's estate.

(3) A custodian of medical records may provide a copy of the decedent's medical records to an heir upon receipt of an affidavit by the heir stating that he or she meets the requirements of this section and that no executor or administrator has been appointed by a chancery court with respect to the estate of the decedent.

(4) The authority of the heir to act on behalf of the decedent shall terminate upon the appointment of an executor or administrator to act on behalf of the estate of the decedent. However, the custodian of medical records shall be entitled to rely upon the affidavit of the heir until the custodian of medical records receives written notice of the appointment of an executor or administrator.

(5) A custodian of medical records shall not be required to provide more than three (3) heirs with a copy of the decedent's medical records before the appointment of an executor or administrator.

(6) The provisions of this section shall not prohibit an executor or administrator from requesting and receiving the medical records of a decedent after his or her appointment.

SOURCES: Laws, 2009, ch. 524, § 1, eff from and after July 1, 2009.

CHAPTER 11

State Charity Hospitals; Mississippi Children's Rehabilitation Center

| | |
|--|-----------|
| In General | 41-11-1 |
| South Mississippi State Hospital. [Repealed] | |
| Matty Hersee Hospital. [Repealed] | |
| Diagnostic and Treatment Center. [Repealed] | |
| Mississippi Children's Rehabilitation Center | 41-11-101 |

IN GENERAL

- Sec.
- 41-11-1 through 41-11-5. Repealed.
- 41-11-7. Certain counties and municipalities authorized to make appropriations to University of Mississippi Medical Center.
- 41-11-9. Repealed.
- 41-11-11. Closure of Kuhn Memorial State Hospital, South Mississippi State Hospital, and Matty Hersee Hospital; procedures.

§§ 41-11-1 through 41-11-5. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-11-1. [Codes, Hemingway's 1917, § 3966; 1930, § 4610; 1942, § 6965; Laws, 1912, ch. 166; Laws, 1922, ch. 246]

§ 41-11-3. [Codes, 1930, § 4612; 1942, § 6967; Laws, 1924, ch. 307]

§ 41-11-5. [Codes, 1930, § 4613; 1942, § 6968; Laws, 1924, ch. 307]

Editor's Note — Former § 41-11-1 pertained to admission of patients into charity hospital.

Former § 41-11-3 directed the board of trustees to prescribe terms of admission.

Former § 41-11-5 required the superintendent to keep account of cost of treatment.

§ 41-11-7. Certain counties and municipalities authorized to make appropriations to University of Mississippi Medical Center.

In all counties and municipalities whose residents use the facilities of the University of Mississippi Medical Center, the board of supervisors is hereby authorized and empowered, in its discretion, to make an unlimited annual appropriation to the Medical Center, and the governing authorities of the municipality are hereby authorized and empowered, in their discretion, to make an unlimited annual appropriation to the Medical Center. The funds thus appropriated by the county and by the municipality for the added maintenance and support of the Medical Center shall be paid from the General Fund of the county and the municipality, and the amount thus appropriated by the county and by the municipality may be paid in monthly installments for the use and benefit of the Medical Center.

SOURCES: Codes, 1942, §§ 2998.5, 2998.7; Laws, 1950, ch. 297; Laws, 1958, ch. 358; Laws, 1979, ch. 400, § 1; Laws, 1989, ch. 527, § 2, eff from and after June 30, 1989.

Cross References — University of Mississippi medical Center, see §§ 37-115-41 et seq.

§ 41-11-9. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, Hemingway's 1917, § 3966; 1930, §§ 4610, 4611; 1942, §§ 6965, 6966; Laws, 1912, ch. 166; Laws, 1922, ch. 246]

Editor's Note — Former § 41-11-9 provided penalties for violations as to admissions.

§ 41-11-11. Closure of Kuhn Memorial State Hospital, South Mississippi State Hospital, and Matty Hersee Hospital; procedures.

(1) From and after July 1, 1989, the Kuhn Memorial State Hospital at Vicksburg, the South Mississippi State Hospital at Laurel, and the Matty Hersee Hospital at Meridian shall be closed, and the Legislature shall not appropriate any funds for the operation of those hospitals after that date. For each such hospital for which title to the hospital buildings and the land upon which they are located remains in the State of Mississippi after closure of the hospital, except for any part thereof which has been previously leased to a political subdivision or which is used by another state agency or department, the Governor's Office of General Services, Bureau of Building, Grounds and Real Property Management, shall be authorized to sell and transfer title to each of such hospital buildings and such land to any individual, corporation or other entity for an amount not less than the fair market value thereof as determined by three (3) real estate appraisers. However, prior to any such sale, the Office of General Services shall publish notice of its intention to sell the same in a newspaper of general circulation in the county in which the property is located and in Hinds County, Mississippi, and in such publication shall solicit requests for proposals for the use of such property by agencies, departments or political subdivisions of the State of Mississippi. If proposals are received, the Office of General Services shall review the proposals to determine if any proposed use of the property, both real and personal, will reasonably be used to provide a needed service not presently provided by the State of Mississippi or by a political subdivision thereof. If the Office of General Services determines that such needed service may be provided by another state agency, department or political subdivision, it shall transfer title to the real and personal property, as may be needed, to such agency, department or political subdivision subject to any leases or uses of the property by another state agency, department or political subdivision. If no proposals are received,

the Office of General Services may proceed with the sale of the property as provided above in this subsection. The Office of General Services shall submit to the Governor and the Legislature a copy of all proposals received and a detailed statement and explanation of its decision to transfer or not transfer such property no later than October 1, 1989. Any funds received from the sale of such buildings and land shall be paid into the State General Fund.

(2) Any equipment and supplies of such hospitals which cannot be used by any transferee agency, department or political subdivision and which may be used by the University Medical Center or any other agency or institution of the state shall be offered to the Medical Center and other state agencies and institutions, and may be given to any such agency or institution desiring the same upon request, at no charge. If the same equipment or supplies are requested by more than one (1) agency or institution, the State Fiscal Management Board shall determine which agency or institution will be given the equipment or supplies being requested. Any equipment and supplies remaining after being offered to the state agencies and institutions shall be sold by the Fiscal Management Board after advertising for bids thereon. Any funds received from the sale of such equipment and supplies shall be paid into the State General Fund.

(3) None of such hospitals shall admit any person as an inpatient into the hospital after June 15, 1989. Each of the hospitals shall make every effort to locate and make arrangements with hospitals or other appropriate institutions to provide treatment and care to any patients who will continue to need treatment and care after June 30, 1989.

(4) Any monies owed to such hospitals but not collected by June 30, 1989, including, but not limited to payments from Medicare, health or hospitalization insurance, other third parties, or from the patient or his family or estate, shall be paid to the Fiscal Management Board, which shall transfer all such monies received into the State General Fund. Any valid debts or other obligations of such hospitals incurred before July 1, 1989, which have not been paid or finally satisfied by June 30, 1989, including any that were not billed to the hospitals until after June 30, 1989, shall remain an obligation of the state and shall be paid by the Fiscal Management Board from funds appropriated for such purpose. Any ending cash balance of any such hospital on June 30, 1989, shall be applied to payment of any indebtedness or other obligations of that hospital before any other funds are used for such purpose.

SOURCES: Laws, 1989, ch. 527, § 1, eff from and after June 30, 1989, except subsection (3), eff from and after June 1, 1989.

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

SOUTH MISSISSIPPI STATE HOSPITAL
[REPEALED]

SEC.

41-11-31. Repealed.

§ 41-11-31. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, Hemingway's 1917, § 3954; 1930, § 4598; 1942, § 6931; Laws, 1916, ch. 108; Laws, 1966, ch. 452, § 1]

Editor's Note — Former § 41-11-31 provided for the continued existence of the South Mississippi State Hospital, formerly the South Mississippi Charity Hospital.

MATTY HERSEE HOSPITAL
[REPEALED]

SEC.

41-11-51. Repealed.

§ 41-11-51. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

[Codes, 1930, § 4601; 1942, § 6934; Laws, 1922, ch. 299; Laws, 1924, ch. 311]

Editor's Note — Former § 41-11-51 provided for the continued existence of the Matty Hersee Hospital, formerly the East Mississippi Charity Hospital.

DIAGNOSTIC AND TREATMENT CENTER
[REPEALED]

SEC.

41-11-71 through 41-11-91. Repealed.

§§ 41-11-71 through 41-11-91. Repealed.

Repealed by Laws, 1989, ch. 527, § 3, eff from and after June 30, 1989.

§ 41-11-71. [Codes, 1942, § 6930-01; Laws, 1956, ch. 301, § 1]

§ 41-11-73. [Codes, 1942, § 6930-02; Laws, 1956, ch. 301, § 2]

§ 41-11-75. [Codes, 1942, § 6930-03; Laws, 1956, ch. 301, § 3]

§ 41-11-77. [Codes, 1942, § 6930-06; Laws, 1956, ch. 301, § 6]

§ 41-11-79. [Codes, 1942, § 6930-04; Laws, 1956, ch. 301, § 4]

§ 41-11-81. [Codes, 1942, § 6930-05; Laws, 1956, ch. 301, § 5]

§ 41-11-83. [Codes, 1942, § 6930.07; Laws, 1956, ch. 301, § 7]

§ 41-11-85. [Codes, 1942, § 6930-08; Laws, 1956, ch. 301, § 8]

§ 41-11-87. [Codes, 1942, § 6930-09; Laws, 1956, ch. 301, § 9]

§ 41-11-89. [Codes, 1942, § 6930-10; Laws, 1956, ch. 301, § 10]

§ 41-11-91. [Codes, 1942, § 6930-11; Laws, 1956, ch. 301, § 11]

Editor's Note — Former § 41-11-71 provided for the continued existence of the Kuhn Memorial State Hospital, formerly known as the Mississippi State Charity Hospital at Vicksburg.

Former § 41-11-73 contained definitions.

Former § 41-11-75 directed that the Kuhn Memorial State Hospital be operated as a diagnostic and treatment center for chronically ill and impaired.

Former § 41-11-77 authorized the construction of facilities at Vicksburg.

Former § 41-11-79 authorized the state building commission to accept gifts, grants, bequests and devises.

Former § 41-11-81 authorized the commission to utilize funds for construction of facilities, repair and maintenance.

Former § 41-11-83 specified the powers of state building commission.

Former § 41-11-85 authorized the charging of certain patients for treatment.

Former § 41-11-87 authorized contracts for treatment with counties, municipalities and organizations.

Former § 41-11-89 authorized any municipality or county to provide for treatment for residents.

Former § 41-11-91 pertained to the operating funds of hospitals.

MISSISSIPPI CHILDREN'S REHABILITATION CENTER

SEC.

- | | |
|------------|--|
| 41-11-101. | Repealed. |
| 41-11-102. | Children's Rehabilitation Center transferred to University of Mississippi Medical Center, Division of Children's Rehabilitation. |
| 41-11-103. | Rules and regulations. |
| 41-11-104. | Repealed. |
| 41-11-105. | Constructing, erecting, and equipping center. |
| 41-11-107. | Location of center. |
| 41-11-109. | Transfer of center to University medical center; education of patients; eligibility for admission. |
| 41-11-111. | Acceptance of grants, donations and funds. |
| 41-11-113. | Declaration of intent; construction. |

§ 41-11-101. Repealed.

Repealed by Laws, 1989, ch. 544, § 154, eff from and after July 1, 1989.

[Codes, 1942, § 7129-91; Laws, 1956, ch. 308, § 1; Laws, 1968, ch. 437, § 1; Laws, 1972, ch. 322, § 1; Laws, 1981, ch. 498, § 1]

Editor's Note — Former § 41-11-101 created the board of trustees of children's rehabilitation center.

§ 41-11-102. Children's Rehabilitation Center transferred to University of Mississippi Medical Center, Division of Children's Rehabilitation.

The administration, supervision, duties and all aspects of the Children's Rehabilitation Center shall be transferred to the University of Mississippi Medical Center in a division to be called Division of Children's Rehabilitation. It is the intent that there shall be cooperation between the center, the Blake Center and the Department of Health, Children's Services.

The University of Mississippi Medical Center is authorized and empowered to minister to the educational, medical and total needs of those affected by cerebral palsy and other crippling conditions which are amenable to such treatment. The center shall be used to the greatest extent possible for such treatment.

SOURCES: Laws, 1989, ch. 544, § 153, eff from and after July 1, 1989.

Cross References — General provision regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

§ 41-11-103. Rules and regulations.

The University of Mississippi Medical Center shall promulgate such rules, regulations and policies as may be necessary and desirable to carry out the programs of the Mississippi Children's Rehabilitation Center.

SOURCES: Codes, 1942, § 7129-91; Laws, 1956, ch. 308, § 1; Laws, 1968, ch. 437, § 1; Laws, 1972, ch. 322, § 1; Laws, 1981, ch. 498, § 2; Laws, 1989, ch. 544, § 156, eff from and after July 1, 1989.

§ 41-11-104. Repealed.

Repealed by its own terms effective from and after July 1, 1991.

[Laws, 1989, ch. 544, § 155]

Editor's Note — Former § 41-11-104 created the Mississippi Children's Rehabilitation Center Advisory Board.

§ 41-11-105. Constructing, erecting, and equipping center.

The state building commission is hereby authorized and empowered to erect, construct, and equip the Mississippi Children's Rehabilitation Center, which shall have as its purpose the treatment and education of persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment. The cost of constructing, erecting, and equipping such hospital may be paid from such funds as may be appropriated, or may heretofore have been appropriated, for such purpose by the legislature; and funds which are available to the state building commission or which have been set aside and earmarked for the construction, erection, and equipping of the "Crippled Children's Hospital" under the provisions of Chapter 291, Laws of 1954, or the "Mississippi Hospital School for Cerebral Palsy," under the provisions of Chapter 308, Laws of 1956, are hereby designated and shall be applied to the constructing, erecting and equipping of the Mississippi Children's Rehabilitation Center.

SOURCES: Codes, 1942, § 7129-92; Laws, 1954, ch. 291, § 1; Laws, 1956, ch. 308, § 2; Laws, 1972, ch. 322, § 2; Laws, 1981, ch. 498, § 3, eff from and after July 1, 1982.

Editor's Note — Section 31-11-1 provides that wherever the term “state building commission” or “building commission” appears in the laws of the state of Mississippi, it shall be construed to mean the governor’s office of general services. Section 7-1-451, however, provides that wherever the term “Office of General Services” appears in any law the same shall mean the Department of Finance and Administration.

§ 41-11-107. Location of center.

The Mississippi Children’s Rehabilitation Center shall be located and constructed on the property and in accordance with the plans and specifications previously designated for the “Crippled Children’s Hospital,” or its successor the “Mississippi Hospital School for Cerebral Palsy,” at its location on Lakeland Drive in the vicinity of the Four-Year School of Medicine and University Hospital. It is intended that there shall be cooperation between the center and said Four-Year School of Medicine and University Hospital.

SOURCES: Codes, 1942, § 7129-93; Laws, 1954, ch. 291, § 2; Laws, 1956 ch. 308, § 3; Laws, 1972, ch. 322, § 3; Laws, 1981, ch. 498, § 4; Laws, 1989, ch. 544, § 157, eff from and after July 1, 1989.

Cross References — Four-year medical school and university hospital, see §§ 37-115-21 et seq.

§ 41-11-109. Transfer of center to University medical center; education of patients; eligibility for admission.

When the Mississippi Children’s Rehabilitation Center has been completed and made ready for occupancy, the buildings and land on which they are located, together with any and all equipment therefor, shall be conveyed and transferred by the State Building Commission to the University of Mississippi Medical Center for the use and benefit of the State of Mississippi in accordance with the provisions of Sections 41-11-101 through 41-11-113. Title to all land, buildings and equipment held by the board of trustees of the Mississippi Hospital School for Cerebral Palsy shall be conveyed to the University of Mississippi Medical Center for the use and benefit of the state in accordance with the provisions of such sections.

The University of Mississippi Medical Center may contract for and obtain the services of the board of education for the purpose of conducting educational programs for children in the Mississippi Children’s Rehabilitation Center and all institutions and agencies of the state government are requested and directed to participate and cooperate to the fullest extent authorized by law in rendering assistance towards the rehabilitation and restoration of such cerebral palsy patients and patients with other crippling conditions which are amenable to such treatment.

No member of the family of any member of the board of trustees shall be eligible for treatment in the center. Crippled children shall be admitted to the center insofar as practicable in proportion to the number of such children in the counties of the State of Mississippi, so that all such crippled children shall have equal opportunity for admission to the center.

SOURCES: Codes, 1942, § 7129-94; Laws, 1954, ch. 291, § 3; 956, ch. 308, § 4; Laws, 1972, ch. 322, § 4; Laws, 1981, ch. 498, § 5; Laws, 1989, ch. 544, § 158, eff from and after July 1, 1989.

Editor's Note — Section 41-11-101 referred to in this section was repealed by Laws, 1989, ch. 544, § 154, eff from and after July 1, 1989.

Section 41-11-104, referred to in this section, was repealed by its own terms, effective from and after July 1, 1991.

Section 31-11-1 provides that wherever the term “state building commission” or “building commission” appears in the laws of the State of Mississippi, it shall be construed to mean the governor’s office of general services. Section 7-1-451, however, provides that wherever the term “Office of General Services” appears in any law the same shall mean the Department of Finance and Administration.

§ 41-11-111. Acceptance of grants, donations and funds.

The University of Mississippi Medical Center is authorized to accept any and all grants, donations or matching funds from private, public or federal sources in order to add to, improve and enlarge the physical facilities and equipment of the Mississippi Children’s Rehabilitation Center. The State Department of Health and the Crippled Children’s Service are hereby specifically authorized and empowered to provide crutches, braces and any and all other mechanical devices available and designed for the assistance of those persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment.

SOURCES: Codes, 1942, § 7129-96; Laws, 1956, ch. 308, § 6; Laws, 1972, ch. 322, § 6; Laws, 1981, ch. 498, § 6; Laws, 1989, ch. 544, § 159, eff from and after July 1, 1989.

§ 41-11-113. Declaration of intent; construction.

It is the intent of Sections 41-11-101 through 41-11-113 to change the name of the “Mississippi Crippled Children’s Treatment and Training Center” to the Mississippi Children’s Rehabilitation Center and to place it under the supervision and control of the University of Mississippi Medical Center. Sections 41-11-101 through 41-11-113 should be construed liberally in order to accomplish the broad objectives in aiding persons afflicted with cerebral palsy and other crippling conditions which are amenable to such treatment, in any and every manner possible by the use of new techniques as they are developed and become known, and by use of the combination of education and medical services for the rehabilitation of such persons.

SOURCES: Codes, 1942, § 7129-95; Laws, 1956, ch. 308, § 5; Laws, 1972, ch. 322, § 5; Laws, 1981, ch. 498, § 7; Laws, 1989, ch. 544, § 160, eff from and after July 1, 1989.

Editor's Note — Section 41-11-101, referred to in this section, was repealed by Laws of 1989, ch. 544, § 154, effective from and after July 1, 1989.

Section 41-11-104, referred to in this section, was repealed by its own terms, effective from and after July 1, 1991.

CHAPTER 13

Community Hospitals

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|---|-----------|
| In General | 41-13-1 |
| Trust to Insure Against Public Liability Claims | 41-13-101 |

IN GENERAL

| | |
|--|--|
| SEC. | |
| 41-13-1 through 41-13-9. Repealed. | |
| 41-13-10. Definitions. | |
| 41-13-11. Community hospital liability and insurance. | |
| 41-13-13. Repealed. | |
| 41-13-15. Community hospitals and health facilities in counties and municipalities. | |
| 41-13-16. Repealed. | |
| 41-13-17. Repealed. | |
| 41-13-19. Issuance of bonds; election. | |
| 41-13-21. Details of bonds; interest; sale. | |
| 41-13-23. Levy of ad valorem tax or pledge of revenues to pay bonds. | |
| 41-13-24. Obtaining federal assistance. | |
| 41-13-25. Imposition of ad valorem tax; retirement of debt. | |
| 41-13-27. Repealed. | |
| 41-13-29. Board of trustees for county hospitals or other health facilities. | |
| 41-13-31 and 41-13-33. Repealed. | |
| 41-13-35. General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee. | |
| 41-13-36. Employment of administrator; administrator's powers and duties. | |
| 41-13-37. Repealed. | |
| 41-13-38. Provisions of certain loans by hospital; financial assistance to nonprofit groups. | |
| 41-13-39. Trustees may establish day care centers. | |
| 41-13-41. Repealed. | |
| 41-13-43 and 41-13-45. Repealed. | |
| 41-13-47. Proposed budget; reports. | |
| 41-13-49 and 41-13-51. Repealed. | |
| 41-13-53. Benefits with respect to ownership and operation of hospitals organized under other laws. | |

§§ 41-13-1 through 41-13-9. Repealed.

Repealed by Laws 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-1. [Codes, 1930, § 291; 1942, § 2999; Laws, 1930, ch. 58]

§ 41-13-3. [Codes, 1930, § 292; 1942, § 3000; Laws, 1930, ch. 58]

§ 41-13-5. [Codes, 1930, § 292; 1942, § 3000; Laws, 1930, ch. 58]

§ 41-13-7. [Codes, 1930, § 293; 1942, § 3001; Laws, 1930, ch. 58]

§ 41-13-9. [Codes, 1930, § 294; 1942, § 3002; Laws, 1930, ch. 58]

Editor's Note — Former § 41-13-1 authorized municipalities to create joint hospitals.

Former § 41-13-3 authorized the creation of a hospital commission for joint hospitals.

Former § 41-13-5 specified the powers and duties of the hospital commission.

Former § 41-13-7 authorized monthly appropriation for hospital purposes.

Former § 41-13-9 specified procedures for the implementation of a community hospital program.

§ 41-13-10. Definitions.

For purposes of Sections 41-13-10 through 41-13-47, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Administrator" shall mean the chief administrative official and executive officer of a community hospital selected by the board of trustees of such community hospital.

(b) "Board of trustees" shall mean the board appointed pursuant to Section 41-13-29, to operate a community hospital.

(c) "Community hospital" shall mean any hospital, nursing home and/or related health facilities or programs, including without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees.

(d) "Owner" shall mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county or on behalf of any supervisors district, judicial district or election district of the county and shall also mean any governing council or board of any municipality having an ownership interest in any community hospital or leased facility.

(e) "Leased facility" shall mean a hospital, nursing home or related health facilities which an owner has leased to an individual, partnership, corporation, other owner or board of trustees for a term not in excess of fifty (50) years, conditioned upon the facility continuing to operate on a nonprofit basis. A leased facility shall not be deemed or considered to be a community hospital except for purposes of Sections 41-13-19 through 41-13-25, and shall not be subject to the statutory requirements placed on community hospitals except to the extent as may be specifically required by the terms of the applicable lease agreement. However, in situations where another community hospital, acting through its board of trustees, is the lessee of a leased facility, the leased facility shall remain subject to this chapter and other laws applicable to community hospitals, except that the owners of the lessee shall have sole authority to appoint the board of trustees for the leased facility, which shall be the same board of trustees as appointed under Section 41-13-29 for the lessee community hospital.

(f) "Service area" means that area as determined by a board of trustees by its patient origin studies.

SOURCES: Laws, 1985, ch. 511, § 2; Laws, 2002, ch. 441, § 1, eff from and after July 1, 2002.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

JUDICIAL DECISIONS

1. In general.
2. Location of governing body.
3. Community hospital.

1. In general.

Miss. Code Ann. § 41-13-35(5)(n) statutorily empowered community hospital to contract with private physicians in general interest of serving and promoting the health and welfare of the citizens of Mississippi, and a state entity did not lose its status under the Mississippi Tort Claims Act by merely contracting with a private entity; however, the medical center did not meet the statutory definition of a community hospital as it was not governed, operated and maintained by a board of trustees as required by Miss. Code Ann. § 41-13-10(c) for a community hospital. *Bolivar Leflore Med. Alliance, LLP v. Williams*, 938 So. 2d 1222 (Miss. 2006).

Even if the language in the contract had been convincing enough to create a private entity and the county hospital had been deemed private, the injured person's claim remained one of premises liability. The agreement did not alter the fact that the county remained the owner of the physical property that comprised the hospital, and includes the sidewalk outside the hospital where the injured person tripped and fell; thus, the trial court did not err in granting summary judgment in favor of the county hospital due to the injured person's claim being filed outside the one-year statute of limitations under Miss. Code Ann. Section 11-46-11(3).

Allstadt v. Baptist Mem'l Hosp., 893 So. 2d 1083 (Miss. Ct. App. 2005).

Trial court properly granted summary judgment in favor of county hospital where an individual did not file suit against the hospital until more than two years after tripping on its sidewalk; the hospital was still a community hospital under Miss. Code Ann. § 41-13-10(c) even though it had contracted with a private management company to run the hospital. *Allstadt v. Baptist Mem. Hosp.*, — So. 2d —, 2004 Miss. App. LEXIS 847 (Miss. Ct. App. Aug. 24, 2004).

Denial of the general hospital's and physicians' motion to transfer venue in a medical malpractice action was improper under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., where the general hospital was entitled to venue in the county in which the principal offices were located, Miss. Code Ann. § 11-11-3(1), because the decedent's heirs failed to assert a reasonable claim of liability against the medical center and the treating physicians. *Wayne Gen. Hosp. v. Hayes*, 868 So. 2d 997 (Miss. 2004).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-

35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. *Martin v. Memorial Hosp.*, 86 F.3d 1391 (5th Cir. 1996).

2. Location of governing body.

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the Mississippi Tort Claims Act and was entitled to venue in the county in which its governing body's principal offices were located. *Wayne Gen. Hosp. v. Hayes*, — So. 2d —, 2003 Miss. LEXIS 598 (Miss. Nov. 6, 2003).

3. Community hospital.

In a case in which a behavioral health limited liability company (LLC) con-

tracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hospital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. *Sunstone Behavioral Health, LLC v. Covington County Hosp.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, the trial court determined that he was entitled to immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-5. The doctor was an employee of the "community hospital" as defined in Miss. Code Ann. § 41-13-10; the community hospital retained control over the medical partnership. *Estate of Grimes v. Warrington*, 982 So. 2d 365 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Hospital is "leased facility" under Miss. Code Section 41-13-10(e), and is not to be deemed or considered as community hospital except for purposes of Miss. Code Sections 41-13-19 through 41-13-25; hospital is not, therefore, community hospital for purposes of 1993 amendment to Miss. Code Section 41-13-10. *Barnett*, May 28, 1993, A.G. Op. #93-0406.

If board of trustees had established or acquired nursing home prior to closing of hospital, and nursing home was existent when hospital was closed, then board of trustees of hospital would have continued to exist since "community hospital" as defined by 41-13-10(c) had never ceased to exist. *Shuler*, March 30, 1994, A.G. Op. #93-0976.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. *Evans*, August 25, 1995, A.G. Op. #95-0542.

Community hospitals are governmental entities and are not subject to local privilege taxes. *Exum-Petty*, June 5, 1998, A.G. Op. #98-0323.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. *Huff*, August 7, 1998, A.G. Op. #98-0439.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for-profit corporation without being subject to the statute as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of subsection (e) of this section. *Haque*, February 19, 1999, A.G. Op. #99-0082.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of

trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

A community hospital may not exceed the bounds of its service area. Banks, June 27, 2002, A.G. Op. #02-0371.

Where a community hospital is jointly owned by a city and county, any action which must be exercised by the "owner" of

the hospital must be exercised by both the city and the county. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

A county does not have the authority to transfer funds from the nursing home to the county general fund or other funds owed and operated by the county. Dobbins, July 30, 2004, A.G. Op. 04-0270.

Where a building owned by the county for use by a hospital was damaged by fire, the county might, but was not required to, reimburse the hospital for expenses incurred in repairing damage to the hospital buildings resulting from fire. Hemphill, Apr. 26, 2005, A.G. Op. 05-0120.

A physician-clinic would be considered a "community hospital" for purposes of Section 41-13-10. Donnell, July 22, 2005, A.G. Op. 05-0304.

A separate non-profit corporation or limited liability company formed by a community hospital would not fall within the meaning of "community hospital" as set out in Section 41-13-10(c). Williamson, Apr. 7, 2006, A.G. Op. 06-0040.

§ 41-13-11. Community hospital liability and insurance.

(1) [Repealed].

(2) [Repealed].

(3) Subsections (1) and (2) of this section shall stand repealed from and after October 1, 1993.

(4) From and after October 1, 1993, the board of trustees of any community hospital is hereby authorized, in its discretion, to obtain and pay for, out of operating funds of the community hospital, liability insurance of such kinds as said board of trustees deems advisable covering the operation of said community hospital, including trustees, employees and volunteers, and every department thereof, and all machinery, equipment, appliances and motor vehicles thereof or used in connection therewith so as to cover damages or injury to persons or property or both caused by the negligence of any member of said board of trustees or of any officer, director, agent, servant, attorney, employee or volunteer of such hospital while engaged in the performance of his duties or working in connection with the operation of said community hospital. Such insurance shall either be procured from a company or companies authorized to do business and doing business in the State of Mississippi or provided through a program of self insurance established pursuant to the provisions of Section 11-46-17, Mississippi Code of 1972. Such insurance shall be for such amounts of coverage and shall cover such trustees, employees, volunteers, departments, installations, equipment, facilities and activities as the board of trustees, in its discretion, shall determine. The board of trustees may likewise indemnify, either by the purchase of insurance or, directly, where

funds are available, in whole or in part, any trustee, officer, director, agent, volunteer or employee of said facility or program for actual personal expenses incurred in the defense of any suit, or judgments resulting from said suit, brought against said trustee, officer, director, agent, volunteer or employee for alleged negligent or wrongful conduct committed while under the employment of or while providing service to a community hospital.

(5) Notwithstanding the authority to purchase or provide liability insurance as provided for in subsection (4) of this section, any community hospital, owner or board of trustees shall be subject to and shall be governed by the provisions of Section 11-46-1 et seq., Mississippi Code of 1972, for any cause of action which accrues from and after October 1, 1993, on account of any wrongful or tortious act or omission of any such governmental entity, as defined in Section 11-46-1, Mississippi Code of 1972, or its employees relating to or in connection with any activity or operation of any community hospital.

SOURCES: Codes, 1942, § 3002.3; Laws, 1954, ch. 285, §§ 1, 2; Laws, 1982, ch. 395, § 5; Laws, 1983, ch. 468, § 1; Laws, 1984, ch. 495, § 36; Laws, 1984, 1st Ex Sess, ch. 8, § 1; Laws, 1985, ch. 474, § 49; Laws, 1985, ch. 511, § 3; Laws, 1986, ch. 438, § 20; Laws, 1987, ch. 483, § 25; Laws, 1988, ch. 442, § 22; Laws, 1989, ch. 537, § 21; Laws, 1990, ch. 518, § 22; Laws, 1991, ch. 618, § 21; Laws, 1992, ch. 491 § 22, eff from and after passage (approved May 12, 1992).

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

“SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

Former subsection (1) of this section, relating to immunity for certain activities in connection with the operation of community hospitals, and subsection (2), relating to liability insurance, were repealed by Laws of 1992, ch. 491, § 22, eff from and after October 1, 1993.

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Liability insurance coverage of public ambulance service, see § 41-55-5.

JUDICIAL DECISIONS

1. In general.

County medical center was a community hospital as defined by Miss. Code Ann. § 41-13-10, therefore it was governed by and afforded the immunity protection of the Mississippi Tort Claims Act,

Miss. Code Ann. §§ 11-46-1 through 11-46-23. *Gilchrist v. Veach*, 807 So. 2d 485 (Miss. Ct. App. 2002).

A nurse employed by a county hospital was not shielded by immunity under § 41-13-11; no reference is made under

any subsection of § 41-13-11 or elsewhere to the existence of immunity for employees of community hospitals, and, in providing for indemnification of employees, the statute clearly anticipates that a judgment may well be rendered against an employee for his or her negligent or wrongful conduct. *Sullivan v. Sumrall ex rel. Ritchey*, 618 So. 2d 1274 (Miss. 1993).

Section 41-13-11 clearly seeks to exempt county hospitals from liability for actions which may fail to meet a prescribed duty, and the statutory language "notwithstanding that such act or omission may or may not arise out of any activity, transaction or service for which any fee, charge, cost, or other consideration was received or expected to be received in exchange therefor" evinces a clear intent on the part of the legislature to apply the immunity to duties which arise by way of contract; where the legislature has manifested a clear intent to immunize the agencies of the State from suits which arise out of the alleged failures by the agency to fulfill duties implicit in a contractual relationship, that policy will be applied to bar suits in contract as well as in tort. *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

A community hospital's requirement that its emergency room physicians purchase malpractice insurance did not constitute a waiver of the hospital's tort immunity to the extent of the malpractice coverage carried by its physicians. *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

A community hospital's adoption of a resolution that it would indemnify employees occupying certain job positions for expenses incurred in defending suits or judgments incurred in suits for negligence arising out of their employment did not constitute a waiver of the hospital's immunity to the extent of the specified indemnification limits. *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

Even if a hospital had traditionally used funds from its "excess revenues" account to settle claims and pay judgments pursuant to the authority granted by § 41-13-35(5)(h), such expenditures would not constitute a waiver of immunity with regard to future "excess revenues." *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

Any immunities protecting State entities will likewise shield the public officials affiliated with them when they are sued in their official capacities; thus, the individual members of the board of trustees of a community hospital were immunized from suit by § 41-13-11's shield of governmental immunity. *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

Neither decision abolishing judicial doctrine of sovereign immunity nor legislation enacted to replace that doctrine have any bearing on hospital's motion for summary judgment on ground that it is entitled to immunity from suit under § 41-13-11(1) [repealed]. *Johnese v. Jefferson Davis Mem. Hosp.*, 637 F. Supp. 1198 (S.D. Miss. 1986).

ATTORNEY GENERAL OPINIONS

Section 41-13-11 does not preclude the hospital Board of Trustees from honoring its indemnification obligations simply be-

cause the indemnitee has procured insurance in his defense. Nichols, July 25, 1995, A.G. Op. #95-0259.

RESEARCH REFERENCES

ALR. Liability of charitable organization under respondeat superior doctrine for tort of unpaid volunteer. 82 A.L.R.3d 1213.

Hospital's liability for mentally deranged patient's self-inflicted injuries. 36 A.L.R.4th 117.

Hospital's liability for patient's injury or death resulting from escape or attempted escape. 37 A.L.R.4th 200.

Liability of hospital or sanitarium for negligence of physician or surgeon. 51 A.L.R.4th 235.

Malpractice in diagnosis and treatment

of male urinary tract and related organs. 48 A.L.R.5th 575.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Agency, Form 224.1 (complaint, petition, or declaration — allegation — against hospital — reliance on apparent authority of physician — hospital held itself out as full service hospital).

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals and Asylums, Forms 41 et seq. (liability for injuries).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 121 et seq. (care of patients; liability for malpractice).

35 Am. Jur. Proof of Facts 2d 75, Hospital's Failure to Prevent Patient from Falling.

43 Am. Jur. Proof of Facts 2d 109, Hospital — Acquired Infections.

25 Am. Jur. Trials 185, Hospital Recovery Room Accidents.

CJS. 41 C.J.S., Hospitals § 2.

§ 41-13-13. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[Codes, 1942, § 3002.5; Laws, 1956, ch. 309, §§ 1, 2]

Editor's Note — Former § 41-13-13 authorized the construction of hospitals in certain counties under the Hill-Burton Act.

§ 41-13-15. Community hospitals and health facilities in counties and municipalities.

(1) Any county and/or any political or judicial subdivision of a county and/or any municipality of the State of Mississippi, acting individually or jointly, may acquire and hold real estate for a community hospital either recognized and/or licensed as such by either the State of Mississippi or the United States Government, and may, after complying with applicable health planning and licensure statutes, construct a community hospital thereon and/or appropriate funds according to the provisions of this chapter for the construction, remodeling, maintaining, equipping, furnishing and expansion of such facilities by the board of trustees upon such real estate.

(2) Where joint ownership of a community hospital is involved, the owners are hereby authorized to contract with each other for determining the pro rata ownership of such community hospital, the proportionate cost of maintenance and operation, and the proportionate financing that each will contribute to the community hospital.

(3) The owners may likewise contract with each other, or on behalf of any subordinate political or judicial subdivision, or with the board of trustees of a community hospital, and/or any agency of the State of Mississippi or the United States Government, for necessary purposes related to the establishment, operation or maintenance of community hospitals and related programs wherever located, and may either accept from, sell or contribute to the other entities, monies, personal property or existing health facilities. The owners or the board of trustees may also receive monies, property or any other valuables of any kind through gifts, donations, devises or other recognized means from any source for the purpose of hospital use.

(4) Owners and boards of trustees, acting jointly or severally, may acquire and hold real estate for offices for physicians and other health-care practitioners and related health care or support facilities, provided that any contract for the purchase of real property must be ratified by the owner, and may thereon construct and equip, maintain and remodel or expand such offices and related facilities, and the board of trustees may lease same to members of the hospital staff or others at a rate deemed to be in the best interest of the community hospital.

(5) If any political or judicial subdivision of a county is obligated hereunder, the boundaries of such district shall not be altered in such a manner as to relieve any portion thereof of its obligation hereunder.

(6) Owners may convey to any other owner any or all property, real or personal, comprising any existing community hospital, including related facilities, wherever located, owned by such conveying owner. Such conveyance shall be upon such terms and conditions as may be agreed upon and may make such provisions for transfers of operating funds and/or for the assumption of liabilities of the community hospital as may be deemed appropriate by the respective owners.

(7)(a) Except as provided for in subsection (11) of this section, owners may lease all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8), (9) and (10) of this section. The term of such lease shall not exceed fifty (50) years. Such lease shall be conditioned upon (i) the leased facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the lease shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds from the lease being deposited in the general fund of the owner, which proceeds may be used for any lawful purpose. Such lease shall be subject to the express approval of the board of trustees of the community hospital, except in the case where the board of trustees of the community hospital will be the lessee. However, owners may not lease any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to lease such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

If the owner wishes to lease a community hospital without an option to sell it and the approval of the board of trustees of the community hospital is required but is not given within thirty (30) days of the request for its approval by the owner, then the owner may enter such lease as described herein on the following conditions: A resolution by the owner describing its

intention to enter such lease shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the lease of the community hospital and the last publication shall be made not more than seven (7) days prior to such date. If, on or prior to the date fixed in such resolution for the lease of the community hospital, there shall be filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of such owner, requesting that an election be called and held on the question of the lease of the community hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In such case, no such lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of such owner who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as hereinabove provided for the publication of the initial resolution. Such election shall be conducted and the return thereof made, canvassed and declared as nearly as may be in like manner as is now or may hereafter be provided by law in the case of general elections in such owner. If, on or prior to the date fixed in the owner's resolution for the lease of the community hospital, no such petition as described above is filed with the clerk of the owner, then the owner may proceed with the lease subject to the other requirements of this section. Subject to the above conditions, the lease agreement shall be upon such terms and conditions as may be agreed upon and may make such provision for transfers of tangible and intangible personal property and operating funds and/or for the assumption of liabilities of the community hospital and for such lease payments, all as may be deemed appropriate by the owners.

(b) Owners may sell and convey all or part of the property, real or personal, comprising a community hospital, including any related facilities, wherever located, and/or assets of such community hospital, to any individual, partnership or corporation, whether operating on a nonprofit basis or on a profit basis, or to the board of trustees of such community hospital or any other owner or board of trustees, subject to the applicable provisions of subsections (8) and (10) of this section. Such sale and conveyance shall be upon such terms and conditions as may be agreed upon by the owner and the purchaser that are consistent with the requirements of this section, and the parties may make such provisions for the transfer of operating funds or for the assumption of liabilities of the facility, or both, as they deem appropriate. However, such sale and conveyance shall be conditioned upon (i) the facility continuing to operate in a manner safeguarding community health interests; (ii) the proceeds from such sale being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19 as and when they are due, provided that the terms of the sale shall cover any indebtedness pursuant to Section 41-13-19; and (iii) any surplus proceeds

from the sale being deposited in the general fund of the owner, which proceeds may be used for any lawful purpose. However, owners may not sell or convey any community hospital to the University of Mississippi Medical Center unless first the University of Mississippi Medical Center has obtained authority to purchase such hospital under specific terms and conditions from the Board of Trustees of State Institutions of Higher Learning.

(8) Whenever any owner decides that it may be in its best interests to sell or lease a community hospital as provided for under subsection (7) of this section, the owner shall first contract with a certified public accounting firm, a law firm or competent professional health care or management consultants to review the current operating condition of the community hospital. The review shall consist of, at minimum, the following:

(a) A review of the community's inpatient facility needs based on current workload, historical trends and projections, based on demographic data, of future needs.

(b) A review of the competitive market for services, including other hospitals which serve the same area, the services provided and the market perception of the competitive hospitals.

(c) A review of the hospital's strengths relative to the competition and its capacity to compete in light of projected trends and competition.

(d) An analysis of the hospital's options, including service mix and pricing strategies. If the study concludes that a sale or lease should occur, the study shall include an analysis of which option would be best for the community and how much revenues should be derived from the lease or sale.

(9) After the review and analysis under subsection (8) of this section, an owner may choose to sell or lease the community hospital. If an owner chooses to sell such hospital or lease the hospital with an option to sell it, the owner shall follow the procedure specified in subsection (10) of this section. If an owner chooses to lease the hospital without an option to sell it, it shall first spread upon its minutes why such a lease is in the best interests of the persons living in the area served by the facility to be leased, and it shall make public any and all findings and recommendations made in the review required under proposals for the lease, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals. The owner shall lease to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(10) If an owner wishes to sell such community hospital or lease the hospital with an option to sell it, the owner first shall conduct a public hearing on the issue of the proposed sale or lease with an option to sell the hospital. Notice of the date, time, location and purpose of the public hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the public hearing and the last publication shall be made not

more than seven (7) days before that date. If, after the public hearing, the owner chooses to sell or lease with an option to sell the hospital, the owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased. The owner then shall publish a copy of the resolution; the requirements for proposals for the sale or lease with an option to sell the hospital, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals; and the date proposed by the owner for the sale or lease with an option to sell the hospital. Such publication shall be made once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date proposed for the sale or lease with an option to sell the hospital and the last publication shall be made not more than seven (7) days before that date. If, on or before the date proposed for the sale or lease of the hospital, there is filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner, requesting that an election be called and held on the question of the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In that case, no such sale or lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of the owner who vote on the proposition at such election. Notice of the election shall be given by publication in the same manner as provided for the publication of the initial resolution. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. If, on or before the date proposed for the sale or lease of the hospital, no such petition is filed with the clerk of the owner, then the owner may sell or lease with an option to sell the hospital. Such sale or lease shall be made to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(11) A lessee of a community hospital, under a lease entered into under the authority of Section 41-13-15, in effect prior to July 15, 1993, or an affiliate thereof, may extend or renew such lease whether or not an option to renew or extend the lease is contained in the lease, for a term not to exceed fifteen (15) years, conditioned upon (a) the leased facility continuing to operate in a manner safeguarding community health interest; (b) proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19; (c) surplus proceeds from the lease being used for health related purposes; (d) subject to the express approval of the board of trustees of the community hospital; and (e) subject to the express approval of the owner. If no board of trustees is then existing, the owner shall have the right to

enter into a lease upon such terms and conditions as agreed upon by the parties. Any lease entered into under this subsection (11) may contain an option to purchase the hospital, on such terms as the parties shall agree.

SOURCES: Codes, 1942, § 7129-50; Laws, 1944, ch. 277, § 1; Laws, 1946, ch. 412, § 1; Laws, 1948, ch. 435, § 1; Laws, 1954, ch. 294, § 1; Laws, 1958, ch. 356; Laws, 1960, ch. 353; Laws, 1962, ch. 401; Laws, 1966, ch. 461, § 1; Laws, 1968, ch. 442, § 1; Laws, 1972, ch. 321, § 1; ch. 494, § 1; Laws, 1973, ch. 442, § 1; Laws, 1974, ch. 487; Laws, 1977, ch. 389; Laws, 1979, ch. 463; Laws, 1982, ch. 395, § 1; Laws, 1985, ch. 511, § 4; Laws, 1987, ch. 494; Laws, 1988, ch. 387; Laws, 1989, ch. 426, § 1; Laws, 1990, ch. 383, § 1; Laws, 1992, ch. 551 § 1; Laws, 1993, ch. 535, § 1; Laws, 1994, ch. 546, § 1, eff from and after July 1, 1994.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

“SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

On July 15, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 535, § 1.

Cross References — Exercise of power of eminent domain, generally, see §§ 11-27-1 et seq.

Municipal power to establish and maintain hospitals, see §§ 21-17-1, 21-19-5, 21-19-7.

Regulation of hospitals, see §§ 41-9-1 et seq.

Immunity of entities operating hospitals created under this section, liability insurance and waiver of immunity, see § 41-13-11.

Provision that terms of lease of community hospital or any of its assets shall cover any indebtedness under this section, see § 41-13-15.

Authorization for ad valorem tax supporting facilities and services established under provisions of §§ 41-13-15 through 41-13-51, see § 41-13-25.

Power of the board of trustees of a hospital to appoint the administrator, superintendent or other chief officer of the hospital, see § 41-13-35.

Authority of boards of trustees of community hospitals to contract with the Mississippi Hospital Equipment and Facilities Authority for financing or refinancing of hospital equipment or facilities, see § 41-73-47.

Institutions for the aged and infirm, see §§ 43-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

A hospital which was jointly owned by a city and a hospital district, and was gov-

erned by a board of trustees jointly appointed by the city council and the county board of supervisors, was a “subdivision

[of the state] or municipal corporation thereof" within the meaning and contemplation of Art 4, § 104 of the Mississippi Constitution and § 15-1-51. Thus, the 7-year period of limitations governing judgment liens set forth in § 15-1-47 was inoperative against the hospital. *Enroth v. Memorial Hosp.*, 566 So. 2d 202 (Miss. 1990).

A local law authorizing a city to issue bonds for the purpose of acquiring hospital facilities to be leased to a non-profit corporation provided an alternative to the method of acquiring hospitals provided by general law and did not suspend the general law, as prohibited by Mississippi Constitution, Article 4, § 87; thus, Mississippi Constitution, Article 4, § 89 was applicable. *Kerley v. City of Hattiesburg*, 361 So. 2d 44 (Miss. 1978).

Trustees of a community hospital jointly owned by Prentiss County and the City of Booneville did not have the authority under this section to expend public funds to convert the hospital nurses' quarters into

a private doctor's offices and to lease these converted facilities to a doctor engaged in private practice. Competing physicians, as taxpayers, had standing to bring suit to enjoin the trustees from leasing the offices to the private physician. *Prichard v. Cleveland*, 314 So. 2d 729 (Miss. 1975).

Under this section [Code 1942, § 7129-50], city is authorized, without violating § 183 of Constitution, prohibiting donations to individuals or private corporations, to contribute lots to supervisors' districts for the establishment of a community hospital. *City of Indianola v. Sunflower County*, 209 Miss. 116, 46 So. 2d 81 (1950).

Seeking and effecting co-operation of other agencies as authorized by the statute is a matter within the discretion of the board, and is not a prerequisite to the issuance of the bonds on behalf of the two districts constituting the hospital area. *Board of Supvrs v. State ex rel. Patterson*, 206 Miss. 443, 40 So. 2d 273 (1949).

ATTORNEY GENERAL OPINIONS

When all legal requirements for establishment, operation and designation of service area of home health agency were fully complied with and agency had acquired all proper certificates and/or permits required by law and was in compliance with all applicable state and federal laws and regulations, city did have legal authority to continue as owner of Home Health Agency and operate agency in its multi-county service area. *King*, March 17, 1994, A.G. Op. #94-0084.

The review and analysis conducted under Section 41-13-15(8) should provide enough information for owners to make a decision concerning which option would be best for the community. *Ross*, October 4, 1995, A.G. Op. #95-0631.

Based on the facts, if property is a leased facility rather than a community hospital, then the board would not be subject to the statutory requirements of Section 41-13-15 when selling the property. The Board of Supervisors may sell the property in the manner provided for in Sections 19-7-3 and 19-7-5. *Hall*, August 23, 1996, A.G. Op. #96-0521.

If, after the review required by subsection eight of this section is carried out, the owner a hospital determines that it is in the best interest of the community that the hospital be leased to a nonprofit entity and that such arrangement would better serve the health care needs of the community, it is within the power of the owner, acting in connection with the hospital board of trustees, to limit proposals to lease to such nonprofit entities. *Slade*, Dec. 19, 1997, A.G. Op. #97-0772.

A board of supervisors owning a community hospital within the meaning of this section must, if it elects to lease the community hospital without an option to sell, solicit bids therefor by advertisement. *Huff*, August 7, 1998, A.G. Op. #98-0439.

Pursuant to subsection (7) of this section, and subject to the applicable provisions of subsections (8), (9), and (10) of this section, a lease or sale of a community hospital may be made under such terms and conditions as may be agreed upon by the owner and purchaser or lessee, and shall be conditioned, in part, upon the facility operating in a manner safeguard-

ing community health interests; further, the terms of a proposed lease or sale may include a provision for reverter of the hospital to the municipality/owner in the event that the hospital ceases to operate as a hospital. Myers, February 19, 1999, A.G. Op. #99-0007.

A county board of supervisors could approve the assignment of a hospital lease from a nonprofit corporation to a for profit corporation without being subject to this section as the hospital was operated by a private, nonprofit corporation and was clearly a "leased facility" within the meaning of 41-13-10 (e). Haque, February 19, 1999, A.G. Op. #99-0082.

If a lease of a county owned hospital was entered into under authority of this section and prior to July 15, 1993, then the county could negotiate a lease renewal without advertising and could include therein an option to purchase. Lee, March 3, 1999, A.G. Op. #99-0048.

A board of trustees of a community hospital may convey real property owned by the hospital to the board of supervisors of the county in which the hospital is located. Hurt, May 14, 1999, A.G. Op. #99-0218.

Sections 41-13-15 through 41-13-53 do not authorize the execution of a deed of trust or mortgage upon community hospital real property as collateral for borrowings. Hurt, May 14, 1999, A.G. Op. #99-0218.

Subsection (11) of this section permits a board of supervisors, which has permitted the sublease of a community hospital from the original lessor to a sublessee, to negotiate with the sublessee, without advertising, for a renewal or extension of the original lease not to exceed 15 years upon compliance with the provisions of that subsection. Webb, May 21, 1999, A.G. Op. #99-0248.

A county board of supervisors may create a nonprofit corporation and serve as the sole member thereof and may fund such corporation from the surplus proceeds of a sale or lease of a community hospital owned by the county, when the funds are expended by the corporation to improve the quality of health care provided to citizens and residents of the county, and providing instruction on the

improvement of personal health. Griffith, July 23, 1999, A.G. Op. #99-0370.

A county board of supervisors had the authority to lease a hospital or to sell or lease with an option to sell, provided all applicable requirements of the statute were satisfied prior to such transaction. Williamson, Feb. 4, 2000, A.G. Op. #99-0674.

With regard to the lease of a hospital, a county board of supervisors was required to make appropriate findings upon the minutes that the terms of any lease that were agreed upon between the board and the lessee (a nonprofit corporation) were appropriate, considering the intent to continue the provision of health care services to the community. Williamson, Feb. 4, 2000, A.G. Op. #99-0674.

The owners of a community hospital could not adopt criteria and minimum requirements in a request for proposals under subsection (7) that would limit the respondents only to a nonprofit corporation that had as its sole member the board of the hospital. Galloway, Feb. 11, 2000, A.G. Op. #2000-0036.

The statute permits the inclusion of an option to purchase in an extension or renewal of a lease of a community hospital if the lease was in effect prior to July 15, 1993 and, therefore, a county board of supervisors could amend an existing lease agreement, as extended, to include an option to purchase clause with the existing lessee, thereby allowing the board to negotiate and sell the hospital without the necessity of advertisement for bids. Lee, Jr., March 3, 2000, A.G. Op. #2000-0098.

The owners of a community hospital could not adopt criteria and minimum requirements in a request for proposals under subsection (7) that would limit respondents to a nonprofit corporation that had as its sole member the board of the hospital since such action would be completely anticompetitive and thwart the legislative intent of the statute. Galloway, March 17, 2000, A.G. Op. #2000-0114.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide various medical services, are necessarily owned by the owners of the community hospital, but are managed and operated by the board of

trustees thereof; thus, applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

Surplus proceeds from the sale of a nursing home owned by a county should be placed in the county's general fund and the county may then use those funds for any lawful purpose for which general funds may be expended: note that a county may not expend general fund monies for the purpose of maintaining or constructing county or municipal roads. Bailey, Jan. 31, 2003, A.G. Op. #03-0736.

Owners of a community hospital have the statutory authority to enter into a lease with a private company. Thompson, Feb. 6, 2004, A.G. Op. 04-0010.

Interpretation of the phrase "date proposed for the sale" as being the date established in the notice that proposals are to be received is logical and consistent with the purposes of the law. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

For the limited purposes of conducting the election provided for in subsection (10) of this section, the county and the city should be viewed as one owner. Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

Petitions calling for an election on the question of the sale of a community hospital must be filed on or before the date the proposals for purchase of the hospital are received by the owner(s). Mitchell, Mar. 5, 2004, A.G. Op. 04-0305.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare

facility. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op.04-0131. Sneed, Apr. 9, 2004, A.G. Op. 04-0139.

This office is of the opinion that the board of trustees of a community hospital may separately or jointly contract for the lease of hospital property which will be used as the site of a specialized healthcare facility. Opinion duplicated in Sneed, Apr. 9, 2004, A.G. Op. 04-0139. Brown, Apr. 2, 2004, A.G. Op. 04-0131.

A county has the authority to perform work on county property used by a public community hospital and operated by a duly appointed board of trustees of the hospital. Brown, Aug. 20, 2004, A.G. Op. 04-0374.

If the board of supervisors, as owner of the community hospital, and the board of trustees, who operate and govern the hospital, agree to such a name change then the name of the hospital may be changed. McWilliams, Aug. 6, 2004, A.G. Op. 04-0366.

A publically owned county hospital may enter into written "mutual aid" agreements for temporary loans of hospital equipment to for-profit private facilities in the area for emergency health use, provided that, each temporary loan of equipment is approved by the hospital director. Brown, Aug. 23, 2004, A.G. Op. 04-0373.

Under Section 33-21-1(a) [33-1-21(a)], the fifteen-day annual maximum on military leave applies to a county employee, including an employee of a community hospital or county nursing home established pursuant to Section 41-13-15. McDonald, Mar. 4, 2005, A.G. Op. 05-0064.

Section 41-13-15(11) permits the inclusion of an option to purchase in a renewal of a community hospital lease which was in effect prior to July 15, 1993. Pursuant to the option to purchase, the county may then negotiate and sell the hospital without necessity of advertising for bids or otherwise complying with Sections 41-13-15(7), (8), (9) or (10). Sumners, Oct. 14, 2005, A.G. Op. 05-0436.

A county may amend an existing lease of a hospital to include an option for sale to the lessee on mutually agreeable terms, and, upon amendment, the county may negotiate and sell the hospital to the lessee without necessity of advertisement for

bids or compliance with Sections 41-13-15(7), (8), (9) and (10). Hudson, Feb. 24, 2006, A.G. Op. 06-0052.

In regard to the sale or lease of the facilities currently used as a nursing home and hospital, in reviewing all of the proposals, the county must accept the "highest and best," but in no event may it accept terms less than those which were set out in the proposal. Dobbins, Apr. 7, 2006, A.G. Op. 06-0054.

If a board of supervisors makes a factual determination that a community hospital has ceased to use its building, and

the board of trustees, if any, have dissolved and the board of supervisors is undertaking or has concluded the process of paying the debts of the hospital, then there would be no contemporaneously existent hospital and the board would not need to comply with Section 41-13-15 in the event of a sale. Logan, July 10, 2006, A.G. Op. 06-0262.

A municipal corporation is a corporation within the meaning of Section 41-13-15, and, accordingly, a city authorized to purchase property under that statute. Logan, July 10, 2006, A.G. Op. 06-0262.

RESEARCH REFERENCES

ALR. Licensing and regulation of nursing or rest homes. 97 A.L.R.2d 1187.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§ 41-13-16. Repealed.

Repealed by Laws, 1980, ch. 456, eff from and after July 1, 1980.

[Laws, 1972, ch. 321 § 1; Laws, 1972, 494, § 1; Laws, 1973, ch. 442 § 1]

Editor's Note — Former § 41-13-16 authorized the establishment and operation of joint hospital laundry facilities.

§ 41-13-17. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[Codes, 1942, § 7129-50; Laws, 1944, ch. 277, § 1; Laws, 1946, ch. 412, § 1; Laws, 1948, ch. 435, § 1; Laws, 1954, ch. 294, § 1; Laws, 1958, ch. 356; Laws, 1960, ch. 353; Laws, 1962, ch. 401; Laws, 1966, ch. 461, § 1; Laws, 1968, ch. 442, § 1; Laws, 1981, ch. 484, § 17]

Editor's Note — Former § 41-13-17 directed political subdivisions to cooperate with nonprofit corporations with respect to construction or operation of hospitals.

§ 41-13-19. Issuance of bonds; election.

Such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to make appropriations of the funds thereof for the purpose of Sections 41-13-15 through 41-13-51, and are hereby authorized and empowered to issue and sell the bonds, notes or other evidences of indebtedness thereof, for the purpose of providing funds with which to acquire real estate for and to establish, erect, build, construct, remodel, add to, acquire, equip and furnish community hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities.

ties under the provisions of such sections. Such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity shall not be issued in an amount which will exceed the limit of indebtedness of the county, city, town, supervisors district, judicial district or election district issuing the same, as such limit is prescribed by Sections 19-9-1 et seq., and Sections 21-33-301 et seq., Mississippi Code of 1972.

Before issuing any such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity, the board of supervisors, acting for a county or supervisors district, judicial district or election district thereof, or the mayor and board of aldermen, or city council, or other like governing body, acting for a city or town, shall adopt a resolution declaring its intention to issue the same, stating the amount and purposes thereof, whether such hospital, nurses' home, health center, health department, diagnostic or treatment center, rehabilitation facility, nursing home or related facilities are to be erected, acquired, remodeled, equipped, furnished, maintained and operated by such county, city, town or supervisors district separately, or jointly with one or more other counties, cities, towns, supervisors districts, judicial districts or election districts of a county, and fixing the date upon which further action will be taken to provide for the issuance of such bonds, notes or other evidences of indebtedness. The full text of such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed in such resolution, as aforesaid, and the last publication shall be made not more than seven (7) days prior to such date. If, on or prior to the date fixed in such resolution, as aforesaid, there shall be filed with the clerk of the body by which such resolution was adopted a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of such county, city, town, supervisors district, judicial district or election district, as the case may be, requesting that an election be called and held on the question of the issuance of such bonds, notes or other evidences of indebtedness, then it shall be the duty of the board of supervisors, board of aldermen, city council, or other governing body, as the case may be, to call and provide for the holding of an election as petitioned for. In such case no such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity shall be issued unless authorized by the affirmative vote of a majority of the qualified voters of such county, city, town, supervisors district, judicial district or election district, as the case may be, who vote on the proposition at such election. Notice of such election shall be given by publication in like manner as hereinabove provided for the publication of the initial resolution. Such election shall be conducted and the return thereof made, canvassed and declared as nearly as may be in like manner as is now or may hereafter be provided by law in the case of general elections in such county, city, town, supervisors district, judicial district or election district.

In the discretion of the board of supervisors, board of aldermen, city council, or other governing body, as the case may be, and after adoption of a resolution declaring its intention to issue such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity, an election on the question of the issuance of such bonds, notes or other evidences of indebtedness may be called and held as hereinabove provided without the necessity of publishing said resolution and whether or not a protest to the issuance be filed with the clerk of the governing body. In the event that the question of the issuance of such bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity be not authorized at such election, such question shall not again be submitted to a vote until the expiration of a period of six (6) months from and after the date of such election.

In the event of any joint operation or proposed joint operation as provided by Section 41-13-15, there shall be separate bond issues, and the board or boards of supervisors acting for a county, supervisors district, judicial district or election district, the governing bodies of the municipality or municipalities, as the case may be, shall each issue the bonds, notes, or other evidences of indebtedness of the county, town, city, supervisors district, judicial district or election district, or districts, in such amounts as having been agreed upon by the respective boards of supervisors and governing bodies of the towns or cities, and in so doing follow and comply with the provisions of Sections 41-13-19 through 41-13-23.

SOURCES: Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1, eff from and after passage (approved May 5, 1972).

Editor's Note — Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

Cross References — General authority to issue bonds, see §§ 19-9-1 et seq.

County debt limitation, see §§ 19-9-5, 31-15-5.

Municipal debt limitation, see § 21-33-303.

Depository for county and municipal hospital funds, see § 27-105-365.

Provision that leased facility shall not be deemed a community hospital except for purposes of sections 41-13-19 through 41-13-25, see § 41-13-10.

Interest on community hospital bonds and details and sale of bonds, see § 41-13-21.

JUDICIAL DECISIONS

1. In general.
2. Notice of intention to issue bonds.
3. Effect of election.

1. In general.

Validation proceedings are the exclusive remedy for raising objections in connection with the issuance and sale of bonds, except those which could be or should be

raised before the board of supervisors or municipal authorities, and such objections cannot be properly raised in a suit for an injunction. *Chambers v. Perry*, 183 So. 2d 645 (Miss. 1966).

Order of board of supervisors of county properly entered on its minutes for issuing bonds "for the purpose of providing funds with which to acquire real estate

for, and to establish, erect, build, construct, acquire, equip, furnish and operate a county community hospital, nurses' home and related facilities, for and within the limits of Tishomingo County," is valid order which cannot be made invalid by stipulation of attorneys filed in hearing of protest against bond issue that supervisors had agreed to use part of bond issue for purposes of health center at Belmont while hospital was to be built at Iuka, as attorneys cannot, by stipulation, amend orders of board of supervisors, or bind taxpayers of county. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

Where resolution of board of supervisors authorizing bond issue for hospital provided a rate of interest amounting to 2.897938%, when premium of \$11.00 was included, or 2.899031%, when premium was not included, resolution did not provide greater rate of interest than that stipulated in buyers' bid, that is, an average interest cost of 2.90% and bonds were not void on that ground. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

Even if coupons on bonds issued under this section [Code 1942, § 7129-51] exceed the bids, this is not sufficient to avoid bond issue. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

2. Notice of intention to issue bonds.

A resolution adopted by a county board of supervisors pursuant to this section was not fatally defective for failing to state whether the planned nursing home was to be run by the county alone or jointly with some other political subdivision where it was clear from the resolution's provisions regarding the issuance of the bonds and conduct of the election that the county would be the sole participant. *Crocker v. Board of Supvrs.*, 331 So. 2d 907 (Miss. 1976).

The requirement of this section [Code 1942, § 7129-51] that the notice of intention to issue bonds contain the full text of the resolution is not implicitly abrogated in the case of bonds issued under other statutes; and failure to comply therewith renders the proceedings invalid. In re \$500,000 Pub. Imp. Gen. Obligation Bonds, 247 Miss. 448, 152 So. 2d 698 (1963).

Use of statutory phrase, "related facilities" in resolution of board of supervisors declaring its intention to issue bonds under this section [Code 1942, § 7129-51] to obtain hospital and related facilities and use of same phrase in notice of special election did not render bond issue void, because it failed sufficiently to inform electors of purpose for which it was to be made. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

3. Effect of election.

The result of an election under this section [Code 1942, § 7129-51] is not a mere plebiscite to test public sentiment, but the wishes of the electorate, invited by the board, and formally and fully expressed, constitute a mandate to the board to issue the bonds. *Board of Supvrs v. State ex rel. Patterson*, 206 Miss. 443, 40 So. 2d 273 (1949).

Mandamus will lie to compel board of supervisors to issue bonds for purpose of acquiring land for constructing and operating a community hospital after election in favor thereof was had pursuant to the provisions of Laws 1944, ch 277, as amended by Laws 1946, ch 412 (Code 1942, §§ 7129-50 et seq.), notwithstanding subsequent order of board rescinding its action, since a validating act eliminated any irregularity in the proceeding with respect to the election. *Board of Supvrs v. State ex rel. Patterson*, 206 Miss. 443, 40 So. 2d 273 (1949).

ATTORNEY GENERAL OPINIONS

If county wants to guarantee payment on loans from banks to community hospital, board of supervisors must comply with procedures outlined in Sections 41-13-19

through 41-13-23 of Mississippi Code for issuance of bonds, notes and other evidence of indebtedness. *Palmer*, Feb. 16, 1994, A.G. Op. #93-0990.

§ 41-13-21. Details of bonds; interest; sale.

Such bonds, notes or other evidences of indebtedness as are issued pursuant to Section 41-13-19 shall bear such date or dates, shall be of such denomination or denominations, shall be payable at such place or places, shall bear such rate or rates of interest, and shall mature in such amounts and at such times, not to exceed twenty (20) years for general obligation bonds and not to exceed thirty (30) years for revenue bonds, as may be provided and directed by the board of supervisors, board of aldermen, city council, or other like governing body, as the case may be, consistent with the provisions of Sections 41-13-19 through 41-13-23.

Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of Section 41-13-19 shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing ordinance. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Each interest rate specified in any bid must be in multiples of one-eighth of one percent ($\frac{1}{8}$ of 1%) or one-tenth of one percent ($\frac{1}{10}$ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the State of Mississippi.

All bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit and resources of the issuing entity shall not bear a rate of interest in excess of that allowed in Section 75-17-101, Mississippi Code of 1972, and shall be sold for not less than par plus accrued interest at public sale in the manner provided by Section 31-19-25.

All bonds, notes or other evidences of indebtedness not secured by a pledge of the full faith, credit and resources of the issuing entity shall not bear a rate of interest in excess of that allowed in Section 75-17-103, Mississippi Code of

1972, and shall be sold for not less than par plus accrued interest at public sale in the manner provided by Section 31-19-25.

Bonds, notes or other evidences of indebtedness may be sold to the United States of America or an agency or agencies thereof at private sale upon such terms and conditions as the governing authorities of the issuing entity may determine, consistent with the provisions of Sections 41-13-19 through 41-13-23.

SOURCES: Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1; Laws, 1975, ch. 452; Laws, 1976, ch. 410; Laws, 1977, ch. 480; Laws, 1980, ch. 490, § 3; Laws, 1981, ch. 455, § 3; Laws, 1982, ch. 434, § 21; Laws, 1983, ch. 541, § 26, eff from and after passage (approved April 25, 1983).

Cross References — Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

JUDICIAL DECISIONS

1. In general.

Even if coupons on bonds issued under this section [Code 1942, § 7129-51] exceed the bids, this is not sufficient to avoid bond issue. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

Where resolution of board of supervisors authorizing bond issue for hospital provided a rate of interest amounting to

2.897938%, when premium of \$11.00 was included, or 2.899031%, when premium was not included, resolution did not provide greater rate of interest than that stipulated in buyers' bid, that is, an average interest cost of 2.90% and bonds were not void on that ground. *Board of Supvrs. v. Dawson*, 208 Miss. 666, 45 So. 2d 253 (1950).

§ 41-13-23. Levy of ad valorem tax or pledge of revenues to pay bonds.

(1) All bonds, notes or other evidences of indebtedness issued under Section 41-13-19 may be secured by a pledge of the full faith, credit, and resources of the county, city, town, supervisors district, judicial district or election district issuing the same. There shall annually be levied upon all taxable property within such county, city, town, supervisors district, judicial district or election district, as the case may be, an ad valorem tax, in addition to all other taxes, sufficient to provide for the payment of the principal of and the interest on said bonds, notes or other evidences of indebtedness secured by a pledge of the full faith, credit, and resources of the issuing entity as the same respectively matures and accrues.

(2) All bonds, notes or other evidences of indebtedness issued under Section 41-13-19 may be secured by a pledge of all or a specified portion of the annual general or special revenues of the facility for which the same were issued to acquire, construct, expand, equip or furnish, or by a pledge of any unrestricted unencumbered income from an endowment or other trust funds available to the board of trustees of the facility for which the same were issued

to acquire, construct, expand, equip or furnish. The security for such bonds, notes or other evidences of indebtedness authorized and provided for by this subsection may be in addition to or in lieu of the pledge of the full faith, credit, and resources of the issuing entity as provided in subsection (1) hereof.

SOURCES: Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1; Laws, 1972, ch. 447, § 1, eff from and after passage (approved May 5, 1972).

Cross References — Local ad valorem tax levies, generally, see §§ 27-39-301 et seq. Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

JUDICIAL DECISIONS

1. In general.

A local law authorizing a city to issue bonds for the purpose of acquiring hospital facilities to be leased to a non-profit corporation provided an alternative to the method of acquiring hospitals provided by

general law and did not suspend the general law, as prohibited by Mississippi Constitution, Article 4, § 87; thus, Mississippi Constitution, Article 4, § 89 was applicable. *Kerley v. City of Hattiesburg*, 361 So. 2d 44 (Miss. 1978).

ATTORNEY GENERAL OPINIONS

A county board of supervisors that has issued bonds pursuant to Miss. Code Section 41-13-19 for the construction of a

hospital may use revenues from the operation of the hospital to pay off such bonds. *Dulin*, Aug. 22, 1997, A.G. Op. #97-0530.

§ 41-13-24. Obtaining federal assistance.

Such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to apply for, contract for, accept and receive grants and loans and loan guarantee agreements relating to assistance for the construction of hospital and medical facilities and to that end the governing bodies of such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to enter into such contracts with the United States of America or the agencies or departments thereof as may be necessary to effectuate the purpose of Sections 41-13-15 through 41-13-51.

Any such county, city and town, supervisors district, judicial district or election district, which shall have entered into a binding contract with the United States of America or any agency or department thereof as aforesaid for any such grant, loan or loan guarantee agreement, may borrow money from any private lender for the purpose of providing interim financing for the acquiring, constructing, expanding, equipping and furnishing of the facilities provided for in such contract with the United States of America or agency or department thereof and assign as security for such interim financing the proceeds of any such grant, loan or loan guarantee agreement. Such interim financing shall be upon such terms and conditions as may be determined by the

issuing entity but shall not require payment of interest on the sums actually advanced and received at a rate of interest greater than that rate of interest authorized for interim financing by the state, counties, municipalities or political subdivisions thereof in Section 75-17-107, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 7129-51(e); Laws, 1972, ch. 447, § 1; Laws, 1975, ch. 410; Laws, 1987, ch. 396, eff from and after passage (approved March 20, 1987).

Editor's Note — Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-25. Imposition of ad valorem tax; retirement of debt.

The board of supervisors acting for a county, supervisors district or districts or an election district of such county, and the board of aldermen, city council or other like governing body acting for a city or town, are hereby authorized and empowered to levy ad valorem taxes on all the taxable property of such counties, cities, towns, supervisors district or election district for the purposes of raising funds for the maintenance and operation of hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes and related facilities established under the provisions of Sections 41-13-15 through 41-13-51, and for making additions and improvements thereto and to pledge such ad valorem taxes, whether or not actually levied, for the retirement of debt incurred either by or on behalf of such facilities and/or pursuant to agreements executed under the authority of the Mississippi Hospital Equipment and Facilities Authority Act; however, any debt incurred by the pledge of taxes to retire debt incurred either by or on behalf of such facilities and/or pursuant to such agreements shall not be included in debt limits prescribed by Section 19-9-5 or Section 21-33-303, as the case may be unless and until such pledged taxes are actually levied. The amount levied for such purpose shall not exceed five (5) mills on the dollar in any one (1) year. Expenditures of said taxes for such additions and improvements shall not exceed in any fiscal year the total amount budgeted therefor by the board of trustees for the respective institutions affected. The tax levy authorized in this section shall be in addition to all other taxes now or hereafter authorized to be levied by such counties, cities, towns, supervisors districts or election district.

It is further provided that any such supervisors district in a county with a land area of five hundred ninety-two (592) square miles, wherein Mississippi Highways 8 and 9 intersect, participating with a municipality under provisions of law by contracting to assist the cost of operation and maintenance of an erected hospital, may levy such ad valorem tax as is needed to operate and maintain such hospital as is provided herein.

SOURCES: Codes, 1942, § 7129-52; Laws, 1944, ch. 277, § 3; Laws, 1946, ch. 412, § 3; Laws, 1948, ch. 435, § 3; Laws, 1954, ch. 294, § 3; Laws, 1958, ch. 550; Laws, 1968, ch. 442, § 3; Laws, 1987, ch. 526; Laws, 1991, ch. 389 § 1, eff from and after passage (approved March 15, 1991).

Editor's Note — Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6 eff from and after July 1, 1982.

The Mississippi Hospital Equipment and Facilities Authority Act is codified at §§ 41-73-1 et seq.

Cross References — Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

Provision that leased facility shall not be deemed a community hospital except for purposes of Sections 41-13-19 through 41-13-25, see § 41-13-10.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 41-13-25 specifically authorizes board of supervisors of county and governing body of city to levy taxes for maintenance and operation of hospital created under Miss. Code Sections 41-13-15 through 41-13-51; according to Miss. Code Section 41-13-25, such levy may not exceed five million dollars; further, Miss. Code Section 41-13-25 authorizes governing bodies to pledge these taxes to retirement of debt incurred on behalf of facility, regardless of whether tax has actually been levied. Chamberlin, Feb. 25, 1993, A.G. Op. #93-0050.

County is limited to expending maximum of five mills for maintenance and operation of county hospital in any one year. Palmer, Feb. 16, 1994, A.G. Op. #93-0990.

Should the Board of Supervisors choose to pledge ad valorem taxes to retire a note incurred for the purpose of meeting the current unpaid expenses, they are permitted to do so by the language of Section 41-13-25 if the Board makes a specific factual finding that it is necessary for the retirement of debt of the hospital. Webb, October 5, 1995, A.G. Op. #95-0681.

There is no authority for the board of trustees of a community hospital to acquire and use small purchase procurement cards, i.e., credit cards, issued in the name of the hospital to be used by employees in making small purchases for the hospital. Thornton, Feb. 9, 2001, A.G. Op. #2000-0770.

§ 41-13-27. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[Codes, 1942, § 7129-54; Laws, 1944, ch. 277, § 4; Laws, 1948, ch. 413, § 1; Laws, 1950, ch. 504, § 1; Laws, 1954, ch. 289, § 1; Laws, 1956, ch. 297, § 1; Laws, 1958, ch. 363, § 1]

Editor's Note — Former § 41-13-27 created boards of trustees for municipal hospitals to operate such hospitals.

§ 41-13-29. Board of trustees for county hospitals or other health facilities.

(1) The owners are hereby authorized to appoint trustees for the purpose of operating and governing community hospitals. The appointees of each shall be adult legal residents of the county which has an ownership interest in said community hospital or the county wherein the municipality or other political subdivision holding the ownership interest in the community hospital is located. The authority to appoint trustees shall not apply to leased facilities, unless specifically reserved by the owner in the applicable lease agreement. The board of trustees shall consist of not more than seven (7) members nor less than five (5) members, except where specifically authorized by statute, and shall be appointed by the respective owners on a pro rata basis comparable to

the ownership interests in the community hospital. Where such community hospital is owned solely by a county, or any supervisors districts, judicial districts or election district of a county, or by a municipality, the trustees shall be residents of the owning entity. Trustees for municipally owned community hospitals shall be appointed by the owner of said municipality. Trustees for a community hospital owned by a county shall be appointed by the board of supervisors with each supervisor having the right to nominate one (1) trustee from his district or from the county at large. Appointments exceeding five (5) in number shall be from the county at large. Trustees for a community hospital owned solely by supervisors districts, judicial districts or election district of a county, shall be appointed by the board of supervisors of said county from nominees submitted by the supervisor(s) representing the owner district(s).

(2) Initially the board of trustees shall be appointed as follows: one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Appointments exceeding five (5) in number shall be for terms of four (4) and five (5) years, respectively. Thereafter, all terms shall be for five (5) years. No community hospital trustee holding office on July 1, 1982, shall be affected by this provision, but such terms shall be filled at the expiration thereof according to the provisions of this section, provided, however, that any other specific appointment procedures presently authorized shall likewise not be affected by the terms hereof. Any vacancy on the board of trustees shall be filled within ninety (90) days by appointment by the applicable owner for the remainder of the unexpired term.

(3)(a) Any community hospital erected, owned, maintained and operated by any county located in the geographical center of the State of Mississippi and in which State Highways No. 12 and No. 35 intersect, shall be operated by a board of trustees of five (5) members to be appointed by the board of supervisors from the county at large, one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years. Thereafter all such trustees shall be appointed from the county at large for a period of five (5) years.

(b) Any community hospital erected, owned, maintained and operated by any county situated in the Yazoo-Mississippi Delta Levee District and bordering on the Mississippi River and having a population of not less than forty-five thousand (45,000) and having an assessed valuation of not less than Thirty Million Dollars (\$30,000,000.00) for the year 1954, shall be operated by a board of trustees which may consist of not more than eleven (11) members.

(c) Any hospital erected, owned, maintained and operated by any county having two (2) judicial districts, which is traversed by U. S. Interstate Highway 59, which intersects Highway 84 therein, shall be operated by a board of trustees which shall consist of seven (7) members. The first seven (7) members appointed under authority of this paragraph shall be appointed by the board of supervisors for terms as follows:

Each supervisor of Supervisor Districts One and Two shall nominate and the board of supervisors shall appoint one (1) person from each said beat for a

one-year term. Each supervisor of Supervisor Districts Three and Four shall nominate and the board of supervisors shall appoint one (1) person from each said beat for a two-year term. The supervisor of Supervisor District Five shall nominate and the board of supervisors shall appoint one (1) person from said beat for a three-year term. The medical staff at the hospital shall submit a list of four (4) nominees and the supervisors shall appoint two (2) trustees from said list of nominees, one (1) for a three-year term and one (1) for a one-year term. Thereafter, as the terms of the board of trustee members authorized by this paragraph expire, all but the trustee originally appointed from the medical staff nominees for a one-year term shall be appointed by the board of supervisors for terms of three (3) years. The term of the trustee originally appointed from the medical staff nominees by the board of supervisors for a term of one (1) year shall remain a term of one (1) year and shall thereafter be appointed for a term of one (1) year. The two (2) members appointed from medical staff nominees shall be appointed from a list of two (2) nominees for each said position to be submitted by the medical staff of the hospital for each vacancy to be filled. It is the intent of the Legislature that the board of trustees which existed prior to July 1, 1985, was abolished by amendment to this section under Section 5, Chapter 511, Laws of 1985, and such amendment authorized the appointment of a new board of trustees on or after July 1, 1985, in the manner provided in this paragraph. Any member of the board of trustees which existed prior to July 1, 1985, shall be eligible for reappointment subject to the provisions of this paragraph.

(d) Any community hospital erected, owned, maintained and operated by any county bordering on the Mississippi River having two (2) judicial districts, wherein U.S. Highway 61 and Mississippi Highway 8 intersect, lying wholly within a levee district, shall be operated by a board of trustees which may consist of not more than nine (9) members.

(e) Any community hospital system owned, maintained and operated by any county bordering on the Gulf of Mexico and the State of Alabama shall be operated by a board of trustees constituted as follows: seven (7) members shall be selected as provided in subsection (1) of this section and the remaining members shall be the chiefs of staff at those hospitals which are a part of the hospital system. The term of the chiefs of staff on the board of trustees shall coincide with their service as chiefs of staff at their respective hospitals.

(4) Any community hospital owned, maintained and operated by any county wherein Mississippi Highways 16 and 19 intersect, having a land area of five hundred sixty-eight (568) square miles, and having a population in excess of twenty-three thousand seven hundred (23,700) according to the 1980 federal decennial census, shall be operated by a board of trustees of five (5) members, one (1) of whom shall be elected by the qualified electors of each supervisors district of the county in the manner provided herein. Each member so elected shall be a resident and qualified elector of the district from which he is elected. The first elected members of the board of trustees shall be elected at the regular general election held on November 4, 1986. At such election, the members of the board from supervisors districts one and two shall be elected

for a term of six (6) years; members of the board from supervisors districts three and four shall be elected for a term of two (2) years; and the member of the board from supervisors district five shall be elected for a term of four (4) years. Each subsequent member of the board shall be elected for a term of six (6) years at the same time as the general election in which the member of the county board of education representing the same supervisors district is elected. All members of the board shall take office on the first Monday of January following the date of their election. The terms of all seven (7) appointed members of such board of trustees holding office on the effective date of this act shall expire on the date that the first elected members of the board take office. The board of trustees provided for herein shall not lease or sell the community hospital property under its jurisdiction unless the board of supervisors of the county calls for an election on the proposition and a majority voting in such election shall approve such lease or sale.

The members of the board of trustees provided for in this subsection shall be compensated a per diem and reimbursed for their expenses and mileage in the same amount and subject to the same restrictions provided for members of the county board of education in Section 37-5-21 and may, at the discretion of the board, choose to participate in any hospital medical benefit plan which may be in effect for hospital employees. Any member of the board of trustees choosing to participate in such plan shall pay the full cost of his participation in the plan so that no expenditure of hospital funds is required.

The name of any qualified elector who is a candidate for such community hospital board of trustees shall be placed on the ballot used in the general elections by the county election commissioners, provided that the candidate files with such county election commissioners, not more than ninety (90) days and not less than thirty (30) days prior to the date of such general election, a petition of nomination signed by not less than fifty (50) qualified electors of the county residing within each supervisors district. The candidate in each supervisors district who receives the highest number of votes cast in the district shall be declared elected.

(5) A board of trustees provided for herein may, in its discretion, where funds are available, compensate each trustee per diem in the amount of at least the amount established by Section 25-3-69 up to the maximum amount of not more than One Hundred Fifty Dollars (\$150.00) for each meeting of said board of trustees or meeting of a committee established by the board of trustees where the trustee was in attendance, and in addition thereto provide meals at such meetings and compensate each member attending travel expenses at the rate authorized by Section 25-3-41 for actual mileage traveled to and from the place of meeting.

(6) The owner which appointed a trustee may likewise remove him from office by majority vote for failure to attend at least fifty percent (50%) of the regularly scheduled meetings of said board during the twelve-month period preceding such vote, or for violation of any statute relating to the responsibilities of his office, based upon the recommendation of a majority of the remaining trustees.

(7) The members of the board of trustees, administrator and any other officials of the community hospital as may be deemed necessary or proper by the board of trustees shall be under bond in an amount not less than Ten Thousand Dollars (\$10,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00) with some surety company authorized to do business in the State of Mississippi to faithfully perform the duties of his office. Premiums for such bonds shall be paid from funds of the community hospital.

SOURCES: Codes, 1942, § 7129-55; Laws, 1944, ch. 277, § 5; Laws, 1948, ch. 413, § 2; Laws, 1954, ch. 287; Laws, 1955, Ex. Sess. ch. 32, § 1; Laws, 1956, ch. 297, § 2; Laws, 1958, ch. 363, § 2; Laws, 1962, ch. 402; Laws, 1976, ch. 321; Laws, 1977, ch. 477; Laws, 1979, ch. 327; Laws, 1982, ch. 395, § 2; Laws, 1985, ch. 511, § 5; Laws, 1986, ch. 458, § 37; Laws, 1995, ch. 378, § 1; Laws, 2009, ch. 452, § 1, eff from and after July 1, 2009.

Editor's Note — Section 37-5-21 referred to in (4) was repealed by Laws of 1986, ch. 492, § 44, eff from and after July 1, 1987.

Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

“SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

Laws of 1986, ch. 458, § 48, provided that § 41-13-29 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

Laws of 1986, ch. 462, § 1, proposed to amend this section, subject to approval under § 5 of the Voting Rights Act of 1965, as amended and extended. This proposed amendment was found unconstitutional in *Slater v. Neshoba County Board of Elections Commission*, Cause No. 14034 (Neshoba County Ch. Ct., Oct. 8, 1986). Thereafter, the United States Attorney General issued no determination of pre-clearance of the amendment proposed by Section 1, Chapter 462, Laws, 1986, pursuant to the Voting Rights Act of 1965, as amended and extended.

Amendment Notes — The 2009 amendment in (5), inserted “of at least the amount” and “up to the maximum amount of not more than One Hundred Fifty Dollars 9\$150.00).”

Cross References — Definition of “board of trustees” for purposes of this chapter, see § 41-13-10.

General powers and duties of the board of trustees for county hospitals, see § 41-13-35.

JUDICIAL DECISIONS

1. In general.
2. Liability of board of trustees.
3. Actions.

1. In general.

Since the office of community hospital trustee is a public office, Mississippi Con-

stitution § 90(o) is applicable to Mississippi Code § 41-13-29(3)(c). State ex rel. Pair v. Burroughs, 487 So. 2d 220 (Miss. 1986).

Since Mississippi Code § 41-13-29(3)(c) contravenes Mississippi Constitution § 90, § 89 of the Constitution is inapplicable. State ex rel. Pair v. Burroughs, 487 So. 2d 220 (Miss. 1986).

Subsection (3)(c) of Mississippi Code § 41-13-29 is void in its entirety as in violation of the Mississippi Constitution. State ex rel. Pair v. Burroughs, 487 So. 2d 220 (Miss. 1986).

The appointment of claimant to office of Jones County Community Hospital trustee which was made pursuant to Mississippi Code § 41-13-29(3)(c), containing prohibited "highway" language, was invalid, and his claim for having been appointed to an at-large position under subsection (2) of the statute was without merit. State ex rel. Pair v. Burroughs, 487 So. 2d 220 (Miss. 1986).

That part of subsection (3)(c) referring to highways 59 and 84 bears no rational relationship to the means of appointing trustees. State ex rel. Pair v. Burroughs, 487 So. 2d 220 (Miss. 1986).

County hospital trustees may not make themselves an allowance for services, where the law makes no provision therefor, although they act in good faith and from honest motives. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348 (1958).

Christmas bonuses to county hospital employees as a reward for faithful service, is not within powers of its trustees. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348 (1958).

2. Liability of board of trustees.

In a case in which a behavioral health limited liability company (LLC) contracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hos-

pital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. *Sunstone Behavioral Health, LLC v. Covington County Hosp.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

Members of a county hospital board are not personally liable for amounts paid in good faith to the administrator for traveling expenses in performance of his duties, to any employee for special service rendered while not on salary, for purchases of supplies without competitive bids, and for flowers purchased, as an expression of sympathy, for funerals of members of families of hospital employees. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348 (1958).

No provision is made as to liability of hospital board members for unauthorized or wrongful appropriation of hospital funds; hence such liability is governed by the common law rule that a public officer acting judicially or quasi-judicially is not liable if he acted in good faith within the scope of the subject matter over which he is given jurisdiction. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348 (1958).

3. Actions.

Since an action by a medical insurer for alleged overcharges by a hospital was not one in tort, but for money had and received, the county, the hospital and the hospital trustees were not entitled to have the action dismissed on the ground that it was an action in tort, and that they, as agents or subdivisions of the state, were immune to the suit. *Reserve Life Ins. Co. v. Salter*, 152 F. Supp. 868 (S.D. Miss. 1957).

Evidence of overcharges by a hospital, which was not rebutted, entitled medical insurer to judgment for money had and received against the county, county hospital and the hospital administrator. *Reserve Life Ins. Co. v. Salter*, 152 F. Supp. 868 (S.D. Miss. 1957).

ATTORNEY GENERAL OPINIONS

Trustees for a community hospital owned by a county are to be appointed by

the board of supervisors, with each board member having an exclusive right to nom-

inate one member from their district or the community at large. Williamson, Jan. 7, 1986, A.G. Op. #86-0001.

In the event of a vacancy on the board of trustees for a community hospital owned by a county, each supervisor may select a nominee from his or her own district or the county at large, the board may vote to approve or reject that nominee, and if rejected, that supervisor may name a different nominee. Peters, July 18, 1997, A.G. Op. #97-0372.

If a member of the board of commissioners of a county hospital moves to an adjacent county, he is required to vacate his position, even if he has a business in the city which he continues to maintain. Dulin, April 30, 1999, A.G. Op. #99-0140.

Each supervisor can nominate one trustee from his district or from the county at large, but they should make appointments exceeding five from the county at large. Minga, Oct. 19, 2001, A.G. Op. #01-0653.

The failure of one district to have a trustee appointed by that district supervisor does not invalidate the appointment of the other trustees or the acts of the board. Minga, Oct. 19, 2001, A.G. Op. #01-0653.

If the vacancy on the board of trustees for a county hospital is an at-large ap-

pointment, the appointment shall be made within 90 days by the board of supervisors as a whole. However, if the vacancy is not an at-large appointment, the appropriate supervisor shall submit a nomination and the appointment shall be made within 90 days by the board of supervisors. Thompson, Feb. 6, 2004, A.G. Op. 04-0010.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. James, Jan. 6, 2005, A.G. Op. 05-0580.

Trustees of a community hospital are entitled to be reimbursed at the rate of 20 cents per mile for travel expenses incurred while performing official duties; however, governing authorities of the county may authorize an increase in the mileage reimbursement in an amount not to exceed the rate authorized for state officers and employees in Section 25-3-41 (1). Hall, July 29, 2005, A.G. Op. 05-0353.

Members of boards of trustees of community hospitals may not participate in hospitals' life and health insurance programs after they leave their positions as trustees. James, Jan. 6, 2005, A.G. Op. 05-0580.

§§ 41-13-31 and 41-13-33. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-31. [Codes, 1942, § 7129-56; Laws, 1944, ch. 277; Laws, 1946, ch. 412, § 4; Laws, 1948, ch. 435, § 4; Laws, 1956, ch. 297, § 3; Laws, 1958, ch. 368, § 3; Laws, 1968, ch. 442, § 4; Laws, 1978, ch. 321, § 1]

§ 41-13-33. [Codes, 1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1; Laws, 1972, ch. 510, § 1; Laws, 1981, ch. 436, § 2]

Editor's Note — Former § 41-13-31 established boards of trustees for hospitals other than municipal or county hospitals.

Former § 41-13-33 authorized the payment of compensation to board members.

§ 41-13-35. General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee.

(1) The board of trustees of any community hospital shall have full authority to appoint an administrator, who shall not be a member of the board of trustees, and to delegate reasonable authority to such administrator for the

operation and maintenance of such hospital and all property and facilities otherwise appertaining thereto.

(2) The board of trustees shall have full authority to select from its members, officers and committees and, by resolution or through the board bylaws, to delegate to such officers and committees reasonable authority to carry out and enforce the powers and duties of the board of trustees during the interim periods between regular meetings of the board of trustees; provided, however, that any such action taken by an officer or committee shall be subject to review by the board, and actions may be withdrawn or nullified at the next subsequent meeting of the board of trustees if the action is in excess of delegated authority.

(3) The board of trustees shall be responsible for governing the community hospital under its control and shall make and enforce staff and hospital bylaws and/or rules and regulations necessary for the administration, government, maintenance and/or expansion of such hospitals. The board of trustees shall keep minutes of its official business and shall comply with Section 41-9-68.

(4) The decisions of said board of trustees of the community hospital shall be valid and binding unless expressly prohibited by applicable statutory or constitutional provisions.

(5) The power of the board of trustees shall specifically include, but not be limited to, the following authority:

(a) To deposit and invest funds of the community hospital in accordance with Section 27-105-365;

(b) To establish such equitable wage and salary programs and other employment benefits as may be deemed expedient or proper, and in so doing, to expend reasonable funds for such employee salary and benefits. Allowable employee programs shall specifically include but not be limited to, medical benefit, life, accidental death and dismemberment, disability, retirement and other employee coverage plans. The hospital may offer and fund such programs directly or by contract with any third party and shall be authorized to take all actions necessary to implement, administer and operate such plans, including payroll deductions for such plans;

(c) To authorize employees to attend and to pay actual expenses incurred by employees while engaged in hospital business or in attending recognized educational or professional meetings;

(d) To enter into loan or scholarship agreements with employees or students to provide educational assistance where such student or employee agrees to work for a stipulated period of time for the hospital;

(e) To devise and implement employee incentive programs;

(f) To recruit and financially assist physicians and other health-care practitioners in establishing, or relocating practices within the service area of the community hospital including, without limitation, direct and indirect financial assistance, loan agreements, agreements guaranteeing minimum incomes for a stipulated period from opening of the practice and providing free office space or reduced rental rates for office space where such recruit-

ment would directly benefit the community hospital and/or the health and welfare of the citizens of the service area;

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health-care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, and to terminate said contracts when deemed in the best interests of the community hospital;

(h) To file suit on behalf of the community hospital to enforce any right or claims accruing to the hospital and to defend and/or settle claims against the community hospital and/or its board of trustees;

(i) To sell or otherwise dispose of any chattel property of the community hospital by any method deemed appropriate by the board where such disposition is consistent with the hospital purposes or where such property is deemed by the board to be surplus or otherwise unneeded;

(j) To let contracts for the construction, remodeling, expansion or acquisition, by lease or purchase, of hospital or health-care facilities, including real property, within the service area for community hospital purposes where such may be done with operational funds without encumbering the general funds of the county or municipality, provided that any contract for the purchase of real property must be ratified by the owner;

(k) To borrow money and enter other financing arrangements for community hospital and related purposes and to grant security interests in hospital equipment and other hospital assets and to pledge a percentage of hospital revenues as security for such financings where needed; provided that the owner shall specify by resolution the maximum borrowing authority and maximum percent of revenue which may be pledged by the board of trustees during any given fiscal year;

(l) To expend hospital funds for public relations or advertising programs;

(m) To offer the following inpatient and outpatient services, after complying with applicable health planning, licensure statutes and regulations, whether or not heretofore offered by such hospital or other similar hospitals in this state and whether or not heretofore authorized to be offered, long-term care, extended care, home care, after-hours clinic services, ambulatory surgical clinic services, preventative health-care services including wellness services, health education, rehabilitation and diagnostic and treatment services; to promote, develop, operate and maintain a center providing care or residential facilities for the aged, convalescent or handicapped; and to promote, develop and institute any other services having an appropriate place in the operation of a hospital offering complete community health care;

(n) To promote, develop, acquire, operate and maintain on a nonprofit basis, or on a profit basis if the community hospital's share of profits is used

solely for community hospital and related purposes in accordance with this chapter, either separately or jointly with one or more other hospitals or health-related organizations, facilities and equipment for providing goods, services and programs for hospitals, other health-care providers, and other persons or entities in need of such goods, services and programs and, in doing so, to provide for contracts of employment or contracts for services and ownership of property on terms that will protect the public interest;

(o) To establish and operate medical offices, child care centers, wellness or fitness centers and other facilities and programs which the board determines are appropriate in the operation of a community hospital for the benefit of its employees, personnel and/or medical staff which shall be operated as an integral part of the hospital and which may, in the direction of the board of trustees, be offered to the general public. If such programs are not established in existing facilities or constructed on real estate previously acquired by the owners, the board of trustees shall also have authority to acquire, by lease or purchase, such facilities and real property within the service area, whether or not adjacent to existing facilities, provided that any contract for the purchase of real property shall be ratified by the owner. The trustees shall lease any such medical offices to members of the medical staff at rates deemed appropriate and may, in its discretion, establish rates to be paid for the use of other facilities or programs by its employees or personnel or members of the public whom the trustees may determine may properly use such other facilities or programs;

(p) Provide, at its discretion, ambulance service and/or to contract with any third party, public or private, for the providing of such service;

(q) Establish a fair and equitable system for the billing of patients for care or users of services received through the community hospital, which in the exercise of the board of trustees' prudent fiscal discretion, may allow for rates to be classified according to the potential usage by an identified group or groups of patients of the community hospital's services and may allow for standard discounts where the discount is designed to reduce the operating costs or increase the revenues of the community hospital. Such billing system may also allow for the payment of charges by means of a credit card or similar device and allow for payment of administrative fees as may be regularly imposed by a banking institution or other credit service organization for the use of such cards;

(r) To establish as an organizational part of the hospital or to aid in establishing as a separate entity from the hospital, hospital auxiliaries designed to aid the hospital, its patients, and/or families and visitors of patients, and when the auxiliary is established as a separate entity from the hospital, the board of trustees may cooperate with the auxiliary in its operations as the board of trustees deems appropriate; and

(s) To make any agreements or contracts with the federal government or any agency thereof, the State of Mississippi or any agency thereof, and any county, city, town, supervisors district or election district within this state, jointly or separately, for the maintenance of charity facilities.

(6) No board of trustees of any community hospital may accept any grant of money or other thing of value from any not-for-profit or for-profit organization established for the purpose of supporting health care in the area served by the facility unless two-thirds ($\frac{2}{3}$) of the trustees vote to accept the grant.

(7) No board of trustees, individual trustee or any other person who is an agent or servant of the trustees of any community hospital shall have any personal financial interest in any not-for-profit or for-profit organization which, regardless of its stated purpose of incorporation, provides assistance in the form of grants of money or property to community hospitals or provides services to community hospitals in the form of performance of functions normally associated with the operations of a hospital.

SOURCES: Codes, 1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1; Laws, 1982, ch. 395, § 4; Laws, 1985, ch. 511, § 6; Laws, 1993, ch. 535, § 2; Laws, 1994, ch. 407, § 1; Laws, 2004, ch. 414, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

“SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

On July 15, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 535, § 2.

Cross References — Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Authority of community hospital administrator to exercise powers which have been delegated to him by board of trustees, see § 41-13-36.

Requisite provisions of loan agreements between community hospital and physician, employee, or student, see § 41-13-38.

Authority of boards of trustees of community hospitals to contract with the Mississippi Hospital Equipment and Facilities Authority for financing or refinancing of hospital equipment or facilities, see § 41-73-47.

JUDICIAL DECISIONS

1. In general.
2. Liability.

1. In general.

Given the context of the relationship between the manager and the nursing home, there was no genuine issue of ma-

terial fact regarding whether the manager was an “instrumentality” of the nursing home; as an instrumentality of a community hospital, the manager was entitled to the protections, limitations, and immunities of the Mississippi Tort Claims Act. *Estate of Fedrick v. Quorum Health Res.,*

Inc., — So. 2d —, 2008 Miss. App. LEXIS 672 (Miss. Ct. App. Nov. 4, 2008).

Miss. Code Ann. § 41-13-35(5)(n) statutorily empowered community hospital to contract with private physicians in general interest of serving and promoting the health and welfare of the citizens of Mississippi, and a state entity did not lose its status under the Mississippi Tort Claims Act by merely contracting with a private entity; however, the medical center did not meet the statutory definition of a community hospital as it was not governed, operated and maintained by a board of trustees as required by Miss. Code Ann. § 41-13-10(c) for a community hospital. *Bolivar Leflore Med. Alliance, LLP v. Williams*, 938 So. 2d 1222 (Miss. 2006).

Medical center was an instrumentality of the community hospital as the hospital had nearly total interest in the income and losses of the medical center and majority control over the center's Executive Committee membership, which clearly qualified the hospital as an intermediary or agent through which certain functions of the hospital were accomplished; therefore, the medical center was an instrumentality of the hospital and as an instrumentality, the center was entitled to the protections, limitations and immunities of the Mississippi Tort Claims Act. *Bolivar Leflore Med. Alliance, LLP v. Williams*, 938 So. 2d 1222 (Miss. 2006).

Because Mississippi law permitted hospital to enter into exclusive contract with physician for access to hospital's end stage renal disease (ESRD) units for out-patient kidney dialysis, such contract did not violate Mississippi's antitrust law. *Martin v. Memorial Hosp.*, 130 F.3d 1143 (5th Cir. 1997).

Members of hospital board enjoyed qualified immunity with respect to state law tort and antitrust claims asserted by nephrologist, who was denied access to hospital's end stage renal disease (ESRD) units for out-patient kidney dialysis upon severance of his practice from that of physician with whom hospital had exclusive contract for provision of such services; board members did not exceed their authority, as state law permitted them to enter into exclusive contract, and their

entry into that contract and subsequent reiteration of it did not amount to intentional tortious interference with contract, as that contract pre-dated nephrologist's association with physician and hospital. *Martin v. Memorial Hosp.*, 130 F.3d 1143 (5th Cir. 1997).

Municipal hospital was entitled to state action immunity from federal antitrust claim arising from its exclusive contract with medical supervisor, who performed chronic dialysis in its facility for end stage renal disease, as (1) it was subdivision of municipal corporation under §§ 41-13-10 et seq., it was required to obtain certificate of need under § 41-7-191(1)(a) and (b), and it had right under § 41-13-35(5)(g) to contract with any person to provide services, and (2) purpose of its contract to supervise special unit and perform critical functions was to obtain physician's dedicated services by displacing unfettered professional medical freedom, and allegedly anticompetitive results were thus foreseeable. *Martin v. Memorial Hosp.*, 86 F.3d 1391 (5th Cir. 1996).

Section 41-13-35 does not clearly articulate a state policy to displace competition with regulation or monopoly public service, nor is the suppression of competition a foreseeable result of what § 41-13-35 authorizes, and thus a defendant hospital was not entitled to state action immunity in an action in which a physician alleged that the hospital violated state and federal antitrust law by maintaining an exclusive contract with another physician and denying his request to admit a patient. *Martin v. Memorial Hosp.*, 881 F. Supp. 1087 (S.D. Miss. 1995), rev'd on other grounds, 86 F.3d 1391 (5th Cir. 1996).

Even if a hospital had traditionally used funds from its "excess revenues" account to settle claims and pay judgments pursuant to the authority granted by § 41-13-35(5)(h), such expenditures would not constitute a waiver of immunity with regard to future "excess revenues." *Womble ex rel. Havard v. Singing River Hosp.*, 618 So. 2d 1252 (Miss. 1993).

Community hospital employees who were terminated prior to effective date of 1988 amendment of Miss. Code Anno. § 41-13-35 acquired no property interest

in their continued employment by virtue of enactment of that law. *Johnson v. Southwest Miss. Regional Medical Ctr.*, 878 F.2d 856 (5th Cir. 1989).

Miss. Code § 41-13-35, together with overall statutory package, was intended to allow community hospitals to offer competitive health care services and does not authorize exclusion of competing provider, and thus does not support hospital's claim of clearly articulated state policy sufficient to provide hospital with immunity from anti-trust liability in action by independent, certified registered nurse anesthetist, who had sued hospital for damages arising from hospital's alleged interference with plaintiff's right to work at hospital. *Wicker v. Union County Gen. Hosp.*, 673 F. Supp. 177 (N.D. Miss. 1987).

2. Liability.

In a case in which a behavioral health limited liability company (LLC) contracted with a community hospital to operate and manage a behavioral unit, and the LLC had not requested a guarantee from the hospital board of trustees (trustees) or the county board of supervisors (supervisors), the simple fact that the hospital was under the direction and control of the trustees and the supervisors did not equate to a responsibility on their part to assume the contractual obligations of the hospital. *Sunstone Behavioral Health, LLC v. Covington County Hosp.*, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 77381 (S.D. Miss. Aug. 19, 2008).

ATTORNEY GENERAL OPINIONS

Governing boards of public hospitals may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees under authority of this section (Code 1942, § 7129-56.5). *Ops. A.G.*, 1963-1965, p 108.

The board of trustees of a community hospital does not have the authority to make a loan to the a county board of supervisors if such a loan would not assist in the operation of the hospital. *Brown*, Nov. 27, 1991, A.G. Op. #91-0874.

The board of trustees of a community hospital does not have the authority to terminate a lease contract without an event of default on the part of the physician/tenant, and termination of such a lease arrangement is controlled by the terms and conditions of the original contract, assuming it is a valid and lawful lease. *Nichols*, June 19, 1992, A.G. Op. #92-0412.

Board of trustees of county hospital can legally purchase building from local physician and contract with physician as full-time employee of hospital; however, there is apparently no authority empowering boards of trustees of community hospitals to purchase "good will" through purchase of existing medical practice. *Hurt*, August 3, 1992, A.G. Op. #92-0385.

Community hospital may, through contract, provide organizational capital and

assistance to Mississippi limited partnership for purposes of establishing outpatient care facilities, including construction, acquisition, operation and maintenance of facilities; likewise, hospital may lease property to partnership to be used as site for outpatient facility, contract for sale of outpatient services to partnership based on fair market value, and provide by contract that operating costs of outpatient facility incurred by hospital and partnership with which hospital has contracted to operate outpatient facility are to be reimbursed out of operational revenue of facility. *Cowart*, August 5, 1992, A.G. Op. #92-0098.

Board of Trustees of county hospital has authority to purchase land, buildings, medical and laboratory equipment, accounts receivable and other tangible items to be utilized in a medical practice but has no such authority to purchase intangibles such as good will, patient referrals, etc. *Hurt*, Sept. 18, 1992, A.G. Op. #92-0660.

Where there is no existing board for community hospital, supervisor's districts that own hospital may not, under Miss. Const. Sec. 183, execute guaranty as required by loan agreement to fund reopening of hospital. *Lee*, Dec. 9, 1992, A.G. Op. #92-0941.

City and county may pledge ad valorem taxes that have not actually been levied or

collected as security for loan to community hospital, for purpose of operation and maintenance, including expenditures for recruitment of physicians as provided for in Miss. Code Section 41-13-35(5)(f). Chamberlin, Feb. 25, 1993, A.G. Op. #93-0050.

Miss. Code Section 41-13-35(5)(g) provides that trustees of hospital system, consisting of two general acute care community hospitals owned by county, can contract with nonprofit corporation. Cowart, Mar. 10, 1993, A.G. Op. #92-1010.

Miss. Code Section 41-13-35 gives board of trustees of community hospital broad authority in governing affairs of hospital, and this authority includes retaining counsel; whether board needs advice of counsel at every meeting or at particular meeting is matter within discretion of board. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(5) authorizes board of trustees to establish equitable wage and salary programs and employment benefits; therefore, board, in its discretion, may reduce salary of administrator or any other employee regardless of whether work load has been reduced. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(1) authorizes board of trustees of community hospital to appoint administrator and to delegate reasonable authority to administrator for operation and maintenance of hospital; whether board should approve purchase of equipment or whether board should delegate some of this responsibility to administrator is matter for board to decide in exercise of sound discretion. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Miss. Code Section 41-13-35(3) gives hospital board broad authority and responsibility for governing community hospital. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Hospital board of trustees has authority to remove any employee of community hospital pursuant to Miss. Code Section 41-13-35. Hollimon, May 12, 1993, A.G. Op. #93-0274.

Section 41-13-29(5) provides for compensation of trustees in form of per diem

payments in amount established in Section 25-3-69 and no other compensation is provided; trustees for community hospital are not employees within meaning of Section 41-13-35(5)(b) for purposes of hospital's self-funded medical plan. Genin, Jan. 25, 1994, A.G. Op. #93-0852.

Section 41-13-35(5)(n) authorizes the Board of Trustees of a community hospital to enter into contracts with an insurance reciprocal established pursuant to and operated in accordance with Section 41-13-10 et seq. Evans, August 25, 1995, A.G. Op. #95-0542.

Based upon Section 41-13-35(o), approval of the owner is required only if such acquisition includes the purchase of real property. Otherwise, the ratification of the owner is not legally required. Ross, May 24, 1996, A.G. Op. #96-0333.

A community hospital board of trustees would have authority to cause to be incorporated a nonprofit foundation to solicit contributions and raise funds to support the hospital and its activities, but would be subject to the prohibitions against having any financial interest in the foundation; since such boards are entities and persons authorized to act as incorporators of Mississippi nonprofit corporations, a board would be authorized to act as an incorporator of a nonprofit foundation which would solicit contributions to support hospital activities. O'Donnell, March 27, 1998, A.G. Op. #98-0169.

Paragraph (f) of subsection (5) authorizes hospital trustees, in their discretion, to offer financial and other incentives to recruit and retain the services of physicians in the hospital service area upon the proper findings of the facts necessary for the granting of such assistance set forth in the statute. Williams, August 28, 1998, A.G. Op. #98-0482.

A community hospital is authorized to purchase all tangible assets of a physical therapy and rehabilitation practice for no more than fair market value, without regard to § 31-7-13 and the general bid procedures set out therein; however, if real property is to be purchased as a part of this transaction, such purchase must be ratified by the governing authorities constituting the owner or owners of the hospital; further, no consideration may be

paid for intangible assets of the practice. Williams, May 14, 1999, A.G. Op. #99-0215.

A community hospital may hire full-time medical transcriptionists who will complete the majority of their responsibilities while working at home and may also install and maintain the transcription equipment required by each such medical transcriptionist working from home. Bradley, July 30, 1999, A.G. Op. #99-0331.

A board of trustees of a community hospital may acquire a building and related equipment from a physician, with the permission of the owner of the community hospital, and lease the building back to the physician, and so long as the center is not a separate identifiable legal entity, a certificate of need therefor is not required. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

A board of trustees of a community hospital may construct and equip a facility suitable for a single service ambulatory surgery facility and may thereafter lease such building and equipment to a physician. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

If a lease of a building and/or equipment is for the purpose of recruiting and financially assisting physicians and other health care practitioners in establishing or relocating practices within the service area of the community hospital, subsection (5)(f) permits boards of trustees of community hospitals to provide financial incentives, including reduced rentals; however, if such a lease is not for such purpose, the board of trustees must obtain rent at the fair market value. Hagwood, Jan. 28, 2000, A.G. Op. #2000-0017.

The board of trustees of a community hospital could act as the sole member of a Mississippi nonprofit corporation formed for the purposes of acquiring and holding real property adjacent to the hospital that would be leased to a Mississippi limited liability company, which would construct a medical office building on the property. Galloway, Feb. 11, 2000, A.G. Op. #2000-0036.

Certificates of need, licenses and permits, which empower community hospitals to exist and provide medical services, are necessarily owned by the owners of

the community hospital, but are managed and operated by its board of trustees; applications for new certificates of need by an existing community hospital are effectively in the name of the owner but must be made by its board of trustees. Broussard, March 29, 2000, A.G. Op. #2000-0156.

Pursuant to subsection (5)(n) and by complying with it in situations it contemplates, the board of trustees of a community hospital has the authority to enter into a limited liability company without the written approval of the board of supervisors so long as no capital contribution is made to the company. Broussard, March 29, 2000, A.G. Op. #2000-0156.

A community hospital may pay the cost of continuing education required by state law and associated expenses for the continuing education of paramedics who have agreed to work for the hospital for a stipulated period of time. Pogue, Nov. 3, 2000, A.G. Op. #2000-0646.

The proviso clause of subsection (5)(k) applies to new debt and new pledges in any given year, and does not require or contemplate a reauthorization of debt incurred or pledges made in prior years. Williams, Oct. 12, 2001, A.G. Op. #01-0646.

The board of trustees of a community hospital has authority to contract with the hospital administrator for the furnishing of a car, provided that the car part of the compensation package and is included in the administrator's contract as part of the compensation package and is not additional compensation for services already rendered. McWilliams, Feb. 22, 2002, A.G. Op. #02-0059.

A community hospital may not exceed the bounds of its service area and, therefore, a county, as the owner of a community hospital, does not have authority to effect the transfer, under the guise of a lease, of a community hospital's assets, including licenses and licensed beds, to a for-profit corporation which will then use those licenses and licensed beds to open an existing, non-licensed hospital facility owned by it in another county not shown to be in its service area. Moody, May 24, 2002, A.G. Op. #02-0273.

Pursuant to Section 41-13-35(5)(g), the board of trustees of a community hospital

may enter into a lease agreement with an long term acute care (LTAC) hospital and, further, the board may enter into a contract with the LTAC hospital for provision of designated ancillary services. Cockrell, Mar. 7, 2003, A.G. Op. 03-0097.

Under Section 41-13-35(f) the board of trustees, in its discretion, may offer financial assistance to a hospital staffed physician already established in the service area for the purpose of defraying the cost of the physician's professional malpractice insurance premiums, upon proper findings of facts necessary for the granting of such assistance set forth in the statute. O'Donnell, Apr. 18, 2003, A.G. Op. 03-0173.

It is clearly within the authority of the board of trustees of the Delta Regional Medical Center to establish an employee benefit and incentive program which becomes part of the employment contract. Siler, July 18, 2003, A.G. Op. 03-0338.

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital administrator has the power to enforce compliance with and obedience to that program. Dees, Oct. 24, 2003, A.G. Op. 03-0515.

A community hospital has the authority to include a default provision in a contract for billing of patient services unless that provision is "expressly prohibited by applicable statutory or constitutional provisions." Russell, Feb. 6, 2004, A.G. Op. 04-0001.

Whether a community hospital may properly consider accounts with payment arrangements "current" and "not in default" as long as the patient complies with the agreed payment schedule is a factual determination which is left to the discretion of the board of trustees. Russell, Feb. 6, 2004, A.G. Op. 04-0001.

The board of trustees of a community hospital is empowered to enter into a

contract with several physicians whereby a specialized healthcare facility will be jointly operated, and the contract may include provisions whereby the hospital will provide hospital space, certain equipment and services. Opinion duplicated in Brown, Apr. 2, 2004, A.G. Op. 04-0131. Sneed, Apr. 9, 2004, A.G. Op. 04-0139.

Subdivision (5)(b) of this section provides the Hospital System the ability to adopt and administer an ineligible 457(f) plan. This opinion does not contradict earlier opinions nor supersede them in that they relate to the eligible 457(b) plan as provided for in §§ 25-14-1 et seq. Williams, May 14, 2004, A.G. Op. 03-0660.

The board of trustees of a community hospital is empowered to enter into a contract with a private for-profit corporation for the purpose of jointly developing and operating an assisted living facility at the hospital premises. O'Donnell, May 14, 2004, A.G. Op. 04-0175.

Boards of trustees of community hospitals have broad powers under this section, including the power to provide ambulance service or to contract with any third party, public or private, to provide such service. As such, the board of trustees of a community hospital would not be required to use an ambulance service that has been designated by the county board of supervisors. Malone, July 16, 2004, A.G. Op. 04-0295.

A participating community hospital would not be authorized to make matching employer contributions in the deferred compensation program authorized under Sections 25-14-1 et seq. Robertson, June 26, 2006, A.G. Op. 06-0241.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. Webb, Dec. 22, 2006, A.G. Op. 06-0629.

RESEARCH REFERENCES

ALR. Medical malpractice: hospital's liability for injury allegedly caused by failure to have properly qualified staff. 62 A.L.R.4th 692.

Am Jur. 9A Am. Jur. Legal Forms 2d, Hospitals and Asylums § 136:42.2 (agreement between hospital and management services corporation).

§ 41-13-36. Employment of administrator; administrator's powers and duties.

(1) A board of trustees may enter into a contract of employment with an administrator, the duration of which shall not exceed five (5) years, but which may periodically be renewed for additional years, provided that the duration of any such renewal contract shall not exceed five (5) years.

(2) The administrator shall be the chief executive officer of the community hospital. Subject to any conflicting bylaws, resolutions, rules or regulations adopted by the board of trustees, the administrator's duties and powers shall include, but not be limited to, the following:

(a) To employ and discharge employees, as needed for the efficient performance of the business of the community hospital and prescribe their duties;

(b) To supervise and control the records, accounts, buildings and property of the community hospital and all internal affairs, and maintain discipline therein, and enforce compliance with, and obedience to, all rules, bylaws and regulations adopted by the board of trustees for the government, discipline and management of said hospital, and its employees and staff.

(c) To attend meetings of the board of trustees and to keep the trustees advised of hospital business.

(d) To exercise any of the powers of the board of trustees as described in Section 41-13-35, Mississippi Code of 1972, which have been delegated, by resolution or through the board bylaws, to the administrator.

SOURCES: Laws, 1985, ch. 511, § 7, eff from and after July 1, 1985.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

"SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees."

JUDICIAL DECISIONS

1. In general.

This section does not create a property

right in employment. *Levens v. Campbell*, 733 So. 2d 753 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

The board of trustees of a community hospital may adopt a disciplinary program for employees based on established parking policies. In turn, the hospital ad-

ministrators has the power to enforce compliance with and obedience to that program. Dees, Oct. 24, 2003, A.G. Op. 03-0515.

RESEARCH REFERENCES

ALR. Medical malpractice: hospital's liability for injury allegedly caused by failure to have properly qualified staff. 62 A.L.R.4th 692.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Negligent discharge of employee. 53 A.L.R.5th 219.

Am Jur. 9A Am. Jur. Legal Forms 2d, Hospitals and Asylums § 136:42.2 (agreement between hospital and management services corporation).

§ 41-13-37. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

[1942, § 7129-56.5; Laws, 1958, ch. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1]

Editor's Note — Former § 41-13-37 authorized trustees to obtain liability insurance.

§ 41-13-38. Provisions of certain loans by hospital; financial assistance to nonprofit groups.

(1) Any loan agreement entered into between a community hospital and a physician, employee or student pursuant to Section 41-13-35, Mississippi Code of 1972, shall contain a provision for repayment to the hospital no later than ten (10) years after the final date upon which any such payments are made, with or without interest. In the event of a default in repayment of a loan obligation, the community hospital shall be entitled to reasonable attorney's fees expended to collect the obligation and to all other rights and remedies of a general creditor. No loan agreement with a physician shall impose any condition of admitting a certain number or quota of the physician's patients to the community hospital.

(2) The board of trustees may provide financial assistance or provide grants to nonprofit health-care provider groups and other recognized nonprofit entities and charities where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area.

SOURCES: Laws, 1985, ch. 511, § 8, eff from and after July 1, 1985.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

"SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively

to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

ATTORNEY GENERAL OPINIONS

Miss. Code Section 41-13-38(2), which authorizes community hospitals to provide financial assistance and grants to nonprofit groups, permits board of trustees of hospital to provide financial assistance and grants to nonprofit health care provider groups from time to time, provided that board makes determination at time of each grant that such arrangement will benefit health or welfare of citizens of service area of hospital; however, no binding agreement which commits hospital to program of future grants or assistance may be entered into, for reason that these findings must be found to exist at time of each instance of financial assistance; also, absent specific statutory authority, no agreement of any kind can be made which purports to bind hospital beyond term of office of majority of members of board which enters into such agreement. Cowart, Jan. 20, 1993, A.G. Op. #93-0844.

Miss. Code Section 41-13-38 authorizes community hospital boards of trustees to provide financial assistance to nonprofit health care provider groups and other recognized nonprofit entities “where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area”; this includes financial assistance in form of in-kind support and services. Cowart, Mar. 10, 1993, A.G. Op. #92-1010.

The board of trustees of a public hospital may provide grants and financial as-

sistance to a county health department for the purpose of funding health services provided by such department to the hospital so long as the hospital board makes the requisite determination that the proposed assistance “will benefit the health or welfare of the citizens of the service area” and includes such determination in the minutes of the board each time a grant or contribution of financial assistance is proposed. Oliver, Aug. 15, 1997, A.G. Op. #97-0490.

The board of trustees of a hospital may provide financial assistance in the form of grants of cash and/or in-kind support and services to a nonprofit health care provider where it is determined by the board that such action will benefit the health or welfare of the citizens of the service area. Oliver, Dec. 19, 1997, A.G. Op. #97-0782.

If a hospital board of trustees determines that such action will benefit the health or welfare of the citizens of the service area, then it may provide financial assistance to a nonprofit health care provider in the form of cash, loans, and/or in-kind support services. Williamson, May 22, 1998, A.G. Op. #98-0269.

While the board of trustees of a community hospital is not liable for payment of the taxes on the leasehold interest of a clinic used and occupied by the private physicians and may not pay the taxes for the physicians, the board may provide funds to the physicians as an incentive. Webb, Dec. 22, 2006, A.G. Op. 06-0629.

§ 41-13-39. Trustees may establish day care centers.

The board of trustees of any hospital provided for in Sections 41-13-27 through 41-13-31 shall have full authority in its discretion to operate a child care center for the benefit of its employees and other personnel. Such child care center shall be operated as an integral part of the hospital and, if not located

on the premises dedicated for hospital purposes, shall be located on such other real property, whether or not adjacent to the hospital premises, that may be purchased, leased or otherwise provided as in the case of hospitals and other related facilities, by the governing authorities of the counties, cities and towns, supervisors districts or election districts jointly or separately interested in the operation of the hospital. If such child care centers be leased, the rental therefor shall be paid from hospital funds, and the hospital board of trustees may in its discretion make charges to its employees and other personnel for child care services. In the event that child care centers shall hereafter be subject to licensure by an agency of the State of Mississippi other than the licensing agency for hospitals, child care centers established hereunder shall nevertheless be subject to inspection, approval and licensure by the hospital licensing agency.

SOURCES: Codes, 1942, § 7129-56.5; Laws, 1958, chs. 363, § 4; Laws, 1966, chs. 460, 482; Laws, 1968, ch. 443, § 1, eff from and after passage (approved August 6, 1968).

Editor's Note — Sections 41-13-27 and 41-13-31 referred to in this section were repealed by Laws of 1982, ch 395, § 6, eff from and after July 1, 1982.

ATTORNEY GENERAL OPINIONS

Governing boards of public hospitals under authority of this section (Code may, in their discretion, enter into a contract with a private insurance company for a retirement plan for their employees 1942, § 7129-56.5). Ops. A.G., 1963-1965, p 108.

§ 41-13-41. Repealed.

Repealed by Laws, 1978, ch. 332, § 2, eff from and after July 1, 1978.
[Laws, 1968, ch. 296, §§ 1, 4]

Editor's Note — Former § 41-13-41, by definition of terms, limited the application of that section and §§ 41-13-43, 41-13-45 to class 1 counties, and called for a liberal construction of §§ 41-13-41 through 41-13-45.

§§ 41-13-43 and 41-13-45. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-43. [Codes, 1942, § 7129-55.6; Laws, 1968, ch. 296, § 2; Laws, 1978, ch. 332, § 1]

§ 41-13-45. [Codes, 1942, § 7129-55.7; Laws, 1968, ch. 296, § 3]

Editor's Note — Former § 41-13-43 specified additional powers of trustees in certain counties.

Former § 41-13-45 authorized board of supervisors to provide facilities for expanded health care services.

§ 41-13-47. Proposed budget; reports.

On or before the first Monday in September of each year, the said board of trustees shall make, enter on its minutes and file with the owner or owners, separately or jointly interested in said hospital, a proposed budget based on anticipated income and expenditures for the ensuing fiscal year. Such budget, as submitted or amended, shall be approved by the said owner or owners, as the case may be, which approval shall be evidenced by a proper order recorded upon the minutes of each such owner.

On or before the first Monday in March of each year, said board of trustees shall also make, enter on its minutes and file with such owner or owners, a full fiscal year report which shall contain a complete and correct accounting of all funds received and expended for all hospital purposes.

SOURCES: Codes, 1942, § 7129-57; Laws, 1944, ch. 277, § 7; Laws, 1958, ch. 363, § 5; Laws, 1985, ch. 511, § 9; Laws, 2009, ch. 338, § 1, eff from and after July 1, 2009.

Editor's Note — Laws of 1985, ch. 511, §§ 1, 10, eff from and after July 1, 1985, provide as follows:

“SECTION 1. It is the intent and purpose of this act to clarify and expand the power of boards of trustees of community hospitals so as to allow such community hospitals to operate efficiently, to offer competitive health care services, to respond more effectively to new developments and regulatory changes in the health care area and to continue to serve and promote the health and welfare of the citizens of the State of Mississippi. This act shall be liberally construed so as to give effect to such intent and purpose.

“SECTION 10. This act shall not affect any rights, duties or obligations heretofore granted or imposed by local and private legislation heretofore enacted for the benefit of any owner or community hospital, and the provisions of this act shall be supplemental to and shall not restrict or repeal any general or special authority, powers, rights or privileges with respect to community hospitals heretofore conferred on board of trustees.”

Amendment Notes — The 2009 amendment substituted “March” for “January” near the beginning of the second paragraph.

Cross References — Depository for county and municipal hospital funds, see § 27-105-365.

JUDICIAL DECISIONS

1. In general.

No provision is made as to liability of hospital board members for unauthorized or wrongful appropriation of hospital funds; hence such liability is governed by the common law rule that a public officer

acting judicially or quasi-judicially is not liable if he acted in good faith within the scope of the subject matter over which he is given jurisdiction. *Golding v. Salter*, 234 Miss. 567, 107 So. 2d 348 (1958).

§§ 41-13-49 and 41-13-51. Repealed.

Repealed by Laws, 1982, ch. 395, § 6, eff from and after July 1, 1982.

§ 41-13-49. [Codes, 1942, § 7129-51; Laws, 1944, ch. 277, § 2; Laws, 1946, ch. 412, § 2; Laws, 1948, ch. 435, § 2; Laws, 1954, ch. 294, § 2; Laws, 1966, ch. 459, § 1; Laws, 1968, ch. 442, § 2; Laws, 1970, ch. 321, § 1]

§ 41-13-51. [Codes, 1942, § 7129-53; Laws, 1944, ch. 277, § 3A]

Editor's Note — Former § 41-13-49 authorized supervisors districts to contribute to support of municipal hospital.

Former § 41-13-51 authorized the maintenance of wards for pay patients, and fixed fees and charges.

§ 41-13-53. Benefits with respect to ownership and operation of hospitals organized under other laws.

(1) In any case where a hospital has been or is hereafter established under any provisions of law other than Sections 41-13-15 through 41-13-51, and is owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts or combinations thereof, the respective governing authority of each such political subdivision or part of a political subdivision interested therein may, in its discretion, by adoption of the resolution hereinafter provided for, obtain for itself, its officers and members, the same authority, powers, rights, privileges and immunities with respect to establishing, erecting, building, constructing, remodeling, adding to, acquiring, equipping, furnishing, and operating and maintaining such hospital as if such hospital were originally established and organized under the provisions of said sections.

(2) The aforesaid resolution shall be duly adopted at any regular or special meeting, or any adjournment of a regular or special meeting, of the governing authority and shall be duly spread upon its minutes. Any such resolution shall be sufficient for the purposes hereof if it indicates an intention to obtain the benefits of this section or Sections 41-13-15 through 41-13-51. Multiple resolutions shall not be required in the case of a board of supervisors acting in behalf of more than one (1) supervisors district or election district or any combination of such districts. In the case of a hospital jointly owned and operated such resolution is to be adopted by the respective governing authority of each of the various counties, cities, towns, supervisors' districts or election districts interested therein.

(3) The adoption of the aforesaid resolution shall have the effect of also conferring on and delegating to any board of trustees, board of commissioners or other governing board established for the operation and maintenance of such hospital, and the officers and members of such governing board, the same authority, powers, rights, privileges and immunities with respect to the operation and maintenance of the hospital as are conferred on the boards of trustees, and the officers and members thereof, of community hospitals established and organized under the provisions of Sections 41-13-15 through 41-13-51.

(4) The provisions of this section shall be supplemental to, and shall not restrict, supplant, amend or repeal any general or special authority, powers, rights, privileges and immunities with respect to hospitals heretofore or hereafter conferred on boards of supervisors, municipal governing authorities and hospital governing boards, or the officers and members of such boards or governing authorities, except as the same may delegate authority, powers, rights and privileges to hospital governing boards and the officers and

members thereof. Adoption of the resolution provided for herein shall not amend the method of appointing or electing the officers and members of such hospital governing boards or their tenure of office. Nothing contained herein shall be construed to repeal any local and private law or any part or provision thereof authorizing or establishing a public hospital.

SOURCES: Codes, 1942, § 7129-61; Laws, 1962, ch. 404, §§ 1-4.

Editor's Note — Section 41-13-51 referred to in this section was repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

Cross References — Definition of terms “established” or “hereafter established,” see § 1-3-9.

TRUST TO INSURE AGAINST PUBLIC LIABILITY CLAIMS

SEC.

- 41-13-101. Authorization of trust to insure participating hospitals against public liability claims.
- 41-13-103. Trustees; powers; liability; investments.
- 41-13-105. Liability of participating hospitals.
- 41-13-107. Trust not subject to insurance laws.

§ 41-13-101. Authorization of trust to insure participating hospitals against public liability claims.

There is hereby authorized the establishment, maintenance, administration and operation of any trust established by agreement of any hospitals or other health-care units licensed as such by the State of Mississippi, including without limitation, community hospitals established under this chapter (hereinafter referred to as “hospitals”) as grantors, with such hospitals as beneficiaries, for the purpose of insuring against general public liability claims based upon acts or omissions of such hospitals, including without limitation, claims based upon malpractice. Such hospitals may, by trust agreement among themselves and a trustee or trustees of their selection, specify the terms, conditions and provisions of such a trust.

SOURCES: Laws, 1982, ch. 370, § 1; repealed, 1984, ch. 495, § 38; reenacted and amended, 1985, ch. 474, § 35; Laws, 1986, ch. 438, § 21; Laws, 1987, ch. 480, § 1, eff from and after passage (approved April 15, 1987).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Powers and liabilities of trustees, see § 41-13-103.

Trust not being subject to insurance laws, see § 41-13-107.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Trusts §§ 16, 75, 107 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Agency, Form 224.1 (complaint, petition, or declaration — allegation — against

hospital — reliance on apparent authority of physician — hospital held itself out as full service hospital).

CJS. 89 C.J.S., Trusts §§ 9, 25.

90A C.J.S., Trusts §§ 230-239.

§ 41-13-103. Trustees; powers; liability; investments.

The trustees of trusts established pursuant to Section 41-13-101 shall hold the legal title to all property at any time belonging to the trust. They shall have control over such property as well as the control and management of the business and affairs of the trust. Liability to third persons for any act, omission or obligation of a trustee of a trust, when acting in such capacity, shall extend to the whole of the trust estate or so much thereof as may be necessary to discharge such obligation, but no trustee shall be personally liable for any such act, omission or obligation. The trustees shall have such powers as to the investment of the trust estate as may be set out in the declaration of trust. However, the investments of the trust shall be limited to the same type, kind and quality as those required of a domestic casualty insurer. Without limiting the generality of the foregoing, the trustees shall have any powers, whether conferred upon them by the agreement of trust or otherwise, to perform all acts necessary or desirable to the conduct of the business of a public liability insurer.

SOURCES: Laws, 1982, ch. 370, § 2; repealed, 1984, ch. 495, § 38; reenacted and amended, 1985, ch. 474, § 36; Laws, 1986, ch. 438, § 22; Laws, 1987, ch. 480, § 2, eff from and after passage (approved April 15, 1987).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Trusts §§ 271 et seq., 283 et seq., 344 et seq.

CJS. 90A C.J.S., Trusts §§ 318 et seq., 320 et seq.

§ 41-13-105. Liability of participating hospitals.

No hospital which is a participant in such a trust, as grantor, member, beneficiary or otherwise, shall be liable or obligated to the trust, to the trustee, to any other grantor, member or beneficiary, to any creditor of the trust or to any other person by virtue of its participation other than for the payment of its full agreed contribution to the trust in accordance with the trust agreement. Without limiting the generality of the foregoing, no participating hospital shall

incur any other liability of any nature whatever because of or arising out of its participation in such a trust.

SOURCES: Laws, 1982, ch. 370, § 3; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 37; Laws, 1986, ch. 438, § 23; Laws, 1987, ch. 480, § 3, eff from and after passage (approved April 15, 1987).

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Trusts §§ 73, **CJS.** 90 C.J.S., Trusts §§ 192, 359 et seq.

§ 41-13-107. Trust not subject to insurance laws.

Neither the establishment of a trust under Section 41-13-101 nor the participation of a hospital in such trust shall constitute a “contract of insurance” within the meaning of Section 83-5-5, and the trust shall not be considered an “insurance company” or any other concern subject to the inspection and supervision of the Insurance Commissioner within the meaning of Section 83-5-1 or of the Insurance Commission within the meaning of Section 83-3-1 et seq.

SOURCES: Laws, 1982, ch. 370, § 4; repealed, Laws, 1984, ch. 495, § 38; reenacted and amended, Laws, 1985, ch. 474, § 38; Laws, 1986, ch. 438, § 24; Laws, 1987, ch. 480, § 4, eff from and after passage (approved April 15, 1987).

Editor’s Note — This section contains a reference to the Insurance Commission within the meaning of Section 83-3-1 et seq. Section 83-3-1, which provided for the creation of the Insurance Commission was repealed by Laws of 1987, ch. 422, § 30, eff from and after January 15, 1988. Section 83-3-2 provides that any reference to Insurance Commission shall mean the Commissioner of Insurance.

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 21, 22.

CHAPTER 15

Department for the Prevention of Insanity [Repealed]

§§ 41-15-1 through 41-15-7. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-15-1. [Laws, 1944, ch. 279, §§ 1, 3; Laws, 1952, ch. 317, §§ 1, 2]

§ 41-15-3. [Laws, 1944, ch. 279, §§ 1, 3; Laws, 1952, ch. 317, §§ 1, 2]

§ 41-15-5. [Laws, 1944, ch. 279, § 2]

§ 41-15-7. [Laws, 1944, ch. 279, § 4; Laws, 1952, ch. 317, § 3]

Editor's Note — Former § 41-15-1 created within the state board of health a department for the treatment of certain diseases which could eventually lead to insanity.

Former § 41-15-3 provided for a physician in charge of the department created by former § 41-15-1 and set forth the manner of his selection and his powers and duties.

Former § 41-15-5 dealt with the admission and discharge of patients under the care of the department created by former § 41-15-1.

Former § 41-15-7 dealt with the handling of appropriations and expenditures of the department created by former § 41-15-1.

The 1974 law which repealed these sections created a new state department and board of mental health (see §§ 41-4-1 et seq.), and rescinded the authority formerly vested in the state board of health with respect to mental health (see § 41-4-11(1)). Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

CHAPTER 17

State Mental Institutions

SEC.

- 41-17-1. Establishment of state hospitals and facilities for persons with mental illness.
41-17-3. East Mississippi State Hospital.
41-17-5 through 41-17-9. Repealed.
41-17-11. Furnishing of care for veterans.
41-17-13. Repealed.

§ 41-17-1. Establishment of state hospitals and facilities for persons with mental illness.

Mississippi State Hospital at Whitfield, East Mississippi State Hospital at Meridian, North Mississippi State Hospital at Tupelo, South Mississippi State Hospital at Purvis, the Specialized Treatment Facility for the Emotionally Disturbed in Harrison County, and the Central Mississippi Residential Center at Newton are established for the care and treatment of persons with mental illness, free of charge, except as otherwise provided.

SOURCES: Codes, 1892, § 2830; 1906, § 3211; Hemingway's 1917, § 5553; 1930, § 4568; 1942, § 6901; Laws, 2002, ch. 350, § 2, eff from and after July 1, 2002.

Cross References — Constitutional provision for treatment and care of the insane, see Miss. Const. Art. 4, § 86.

Establishment of state board of mental health and state department of mental health, see §§ 41-4-1 et seq.

State department of mental health as governing authority, see § 41-4-11.

Exemption of certain hospital records from requirement of public access, see § 41-9-68.

Mental retardation and illness centers, facilities and services, see §§ 41-19-1 et seq.

Procedures for an individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Criminal sanctions for unlawfully conspiring to commit an individual to a treatment facility, see § 41-21-107.

JUDICIAL DECISIONS

1. In general.
2. Costs.

1. In general.

The provisions of §§ 41-7-71 et seq., which empowered the Mississippi Hospital Reimbursement Commission to seek reimbursement from the estate of one civilly and involuntarily committed for all or part of the cost of care and treatment rendered by a state hospital, constitute an exception to the general rule of § 41-17-1 that persons are entitled to treatment at

the Mississippi State Hospital "free of charge"; moreover, in an action seeking reimbursement from the estate of one civilly and involuntarily committed, those provisions did not operate as ex post facto laws, since a previous act required reimbursement from solvent incompetent persons for care and treatment at state mental hospitals, and since the Commission claimed nothing against the estate for care or treatment rendered prior to the statutes' effective date. *Chill v. Mississippi*

Hosp. Reimbursement Comm'n, 429 So. 2d 574 (Miss. 1983).

2. Costs.

Where an individual had been committed involuntarily, the trial court erred in ruling that the individual's personal in-

surance would be responsible for the costs associated with his commitment at a private facility when there was no space available at the state institution. In re Bauman, 878 So. 2d 1033 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

41 Am. Jur. 2d, Incompetent Persons §§ 33 et seq.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

44 C.J.S., Insane Persons §§ 57 et seq.

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-17-3. East Mississippi State Hospital.

The state psychiatric hospital and institution established at Meridian by the Act of March 8, 1882, shall continue to exist as a body politic and corporate, under the name of the "East Mississippi State Hospital," with all the privileges conferred and the duties enjoined by law. It may hold and use, as required by law, all the property, real and personal, belonging to or that may be given to it for the purposes of its establishment.

SOURCES: Codes, 1892, § 1624; 1906, § 1799; Hemingway's 1917, § 4492; 1930, § 4565; 1942, § 6897; Laws, 1928, ch. 141; Laws, 2008, ch. 442, § 14, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted "state psychiatric hospital and institution" for "asylum" in the first sentence and made minor stylistic changes.

Cross References — Procedures for and rights during voluntary and involuntary commitment of persons in need of mental treatment, and rights of persons confined in treatment facilities, see §§ 41-21-61 et seq.

§§ 41-17-5 through 41-17-9. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-17-5. [Codes, 1857, ch. 12, art. 6; 1871, § 2090; 1880, § 656; 1892, § 2820; 1906, § 3201; Hemingway's 1917, § 5718; 1930, § 4553; 1942, § 6886; Laws, 1898, ch. 67.]

§ 41-17-7. [Codes, 1857, ch. 12, art. 9; 1871, § 2100; 1880, § 658; 1892, § 2829; 1906, § 3210; Hemingway's 1917, § 5727; 1930, § 4561; 1942, § 6894.]

§ 41-17-9. [Codes, 1906, § 3229; Hemingway's 1917, § 5571; 1930, § 4566; 1942, § 6899; Laws, 1932, ch. 273.]

Editor's Note — Former § 41-17-5 provided certain visitation duties for directors of mental hospitals.

Former § 41-17-7 provided that resident mental hospital officers were exempt from jury service.

Former § 41-17-9 required that a drug store be kept at each mental hospital.

§ 41-17-11. Furnishing of care for veterans.

The directors of the state institutions listed in Section 41-7-73 each may receive any monies that the United States government may offer as federal aid in taking care of and giving special attention to those persons who served with the Armed Forces of the United States during time of war and who are now in or may hereafter be in any of those state institutions. Each of those directors may expend that part of the money paid to him or his institution, according to his best judgment and the requirements of the United States government under which the money is received.

SOURCES: Codes, 1930, § 4567; 1942, § 6900; Laws, 1922, ch. 301; Laws, 2008, ch. 442, § 15, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted “directors of the state institutions listed in Section 41-7-73 each may receive” for “director of the State Insane Hospital at Whitfield and the director of the East Mississippi State Hospital shall be, and each is hereby authorized to receive,” “during time of war” for “during the war against Germany and her allies,” “be in any of those state institutions” for “be in said insane hospitals” and “him or his institution” for “him or his hospital”; and made minor stylistic changes.

Cross References — Guardianship of mentally incompetent veterans, see §§ 35-5-1 et seq.

Transfer of veterans to facility operated by United States Veterans Administration or other federal agency, see § 41-21-77.

§ 41-17-13. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

[Codes, 1942, § 6883-01; Laws, 1946, ch. 425, §§ 1-3.]

Editor's Note — Former § 41-17-13 required separate accommodations at Whitfield for individuals addicted to alcohol or narcotics.

CHAPTER 19

Facilities and Services for Individuals with Mental Retardation or Mental Illness

| | |
|---|-----------|
| North Mississippi Regional Center | 41-19-1 |
| Facilities and Services for Individuals with Mental Retardation or Mental Illness | 41-19-31 |
| Interagency Commission on Mental Illness and Mental Retardation. [Repealed] | |
| Coordination of Services to Mentally Ill and Mentally Retarded. [Repealed] | |
| Contributions by Certain Local Governments to Nonprofit Corporations Assisting Children with Mental Retardation | 41-19-91 |
| Ellisville State School | 41-19-101 |
| South Mississippi Regional Center | 41-19-141 |
| Boswell Regional Center | 41-19-201 |
| Hudspeth Regional Center | 41-19-231 |
| North Mississippi State Hospital and South Mississippi State Hospital | 41-19-251 |
| Central Mississippi Residential Center | 41-19-271 |
| Specialized Treatment Facility in Harrison County | 41-19-291 |
| Mississippi Adolescent Center in Brookhaven | 41-19-301 |

NORTH MISSISSIPPI REGIONAL CENTER

SEC.

| | |
|-----------------------|--|
| 41-19-1. | Declaration of purpose. |
| 41-19-3. | Location of center. |
| 41-19-5. | Construction and equipping of center. |
| 41-19-7. | Management and operation of center. |
| 41-19-9 and 41-19-11. | Repealed. |
| 41-19-13. | Reimbursement. |
| 41-19-15. | Penalties. |
| 41-19-17. | Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to mental retardation. |

§ 41-19-1. Declaration of purpose.

The purpose of Sections 41-19-1 through 41-19-17 is to create, construct, equip and maintain a center, to be located in North Mississippi, for the care and treatment of the mentally retarded, which shall be known as the North Mississippi Regional Center.

SOURCES: Codes, 1942, § 6900-01; Laws, 1968, ch. 438, § 1; Laws, 1992, ch. 336, § 1, eff from and after July 1, 1992.

Cross References — Establishment of State Board of Mental Health and State Department of Mental Health, see §§ 41-4-1 et seq.

Definition of mentally retarded persons see § 41-21-61.

Voluntary admissions of mentally retarded persons, see § 41-21-103.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

Practice References. Health Care Administration Library (CD-ROM) (Matthew Bender).

Carlson, Long-Term Care Advocacy (Matthew Bender).

Perlin, Mental Disability Law: Civil and Criminal, Second Edition (LexisNexis).

§ 41-19-3. Location of center.

The center shall be located on a site selected by the Board of Trustees of Mental Institutions and approved by the Mississippi State Building Commission. The center, however, shall be located as near as possible to an urban area or institution having adequate medical and hospital facilities and shall embrace sufficient land for such agricultural activities as the board may deem necessary for the operation of the center.

Out of funds provided therefor by the Legislature or from any sources, the building commission is hereby authorized to purchase or acquire the necessary land for the location of the center; or the commission may acquire the land by gift, deed, transfer, or other legitimate means; or the center may be located on land belonging to the state or one of its political subdivisions. However, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the Board of Trustees of Mental Institutions in carrying out the provisions of Sections 41-19-1 through 41-19-17.

SOURCES: Codes, 1942, § 6900-02; Laws, 1968, ch. 438, § 2; Laws, 1992, ch. 336, § 2, eff from and after July 1, 1992.

Editor's Note — The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974, and its functions transferred to the State Board of Mental Health and the State Department of Mental Health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — State building commission, see §§ 31-11-1 et seq.

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

Administration by state board of mental health, see § 41-19-7.

§ 41-19-5. Construction and equipping of center.

With funds provided by the legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Mississippi State Building Commission is hereby authorized to construct and equip the necessary residential and service buildings and other facilities to care for approximately five hundred (500) residents. The

general design of the center and all construction plans shall be approved and recommended by the board of trustees of mental institutions.

SOURCES: Codes, 1942, § 6900-03; Laws, 1968, ch. 438, § 3, eff from and after passage (approved June 21, 1968).

Editor's Note — The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the State Board of Mental Health and the State Department of Mental Health, by Laws, 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — State board of mental health succeeding to functions of board of trustees of mental institutions, see § 41-4-11.

§ 41-19-7. Management and operation of center.

The center shall be administered by the state board of mental health. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for the mentally retarded administered by the board.

SOURCES: Codes, 1942, § 6900-04; Laws, 1968, ch. 438, § 4; Laws, 1974, ch. 567, § 14, eff from and after passage (approved April 23, 1974).

Cross References — State department and board of mental health, see §§ 41-4-1 et seq.

Facility being under the jurisdiction and control of the State Department of Mental Health, see § 41-4-11(2).

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Voluntary admissions of mentally retarded persons, see § 41-21-103.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§§ 41-19-9 and 41-19-11. Repealed.

Repealed by Laws, 1984, ch. 477, § 25, eff from and after July 1, 1984.

§ 41-19-9. [Codes, 1942, § 6900-05; Laws, 1968, ch. 438, § 5]

§ 41-19-11. [Codes, 1942, § 6900-06; Laws, 1968, ch. 438, § 6]

Editor's Note — Former § 41-19-9 specified the eligibility for admission to the center.

Former § 41-19-11 specified admission procedures.

§ 41-19-13. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Codes, 1942, § 6900-07; Laws, 1968, ch. 438, § 7; Laws, 1992, ch. 336, § 3, eff from and after July 1, 1992.

Cross References — Liability for care and maintenance of persons in state mental institutions, see § 41-21-79.

§ 41-19-15. Penalties.

Any person who (1) under the provisions of Section 41-19-11, knowingly and unlawfully or improperly causes a person to be adjudged mentally retarded, (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00), imprisonment for not less than six months, or both.

SOURCES: Codes, 1942, § 6900-08; Laws, 1968, ch. 438, § 8, eff from and after passage (approved June 21, 1968).

Editor's Note — Section 41-19-11 referred to in this section was repealed by Laws of 1984, ch. 477, § 25, eff from and after July, 1 1984.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-17. Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to mental retardation.

The North Mississippi Regional Center is hereby designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America, now existing or at any time hereafter enacted, pertaining to mental retardation.

SOURCES: Codes, 1942, § 6900-09; Laws, 1968, ch. 438, § 9; Laws, 1992, ch. 336, § 4, eff from and after July 1, 1992.

FACILITIES AND SERVICES FOR INDIVIDUALS WITH MENTAL
RETARDATION OR MENTAL ILLNESS

SEC.

- 41-19-31. Board of supervisors may select regional districts.
- 41-19-33. Regional commissions; establishment; duties and authority.
- 41-19-35. Appointment, term, and compensation of regional commission members.
- 41-19-37. Location of facilities or services in regions.
- 41-19-38. Mental health facilities subject to local zoning ordinances or regulations.
- 41-19-39. Financial support for facilities or services for individuals with mental illness or mental retardation; tax levy.
- 41-19-41. Commitment of patients to regional mental health and mental retardation centers.
- 41-19-43. Expenses of chancery clerk and sheriff.

§ 41-19-31. Board of supervisors may select regional districts.

For the purpose of authorizing the establishment of mental illness and mental retardation facilities and services in the State of Mississippi, the boards of supervisors of one or more counties are hereby authorized to act singularly or as a group in the selection of a regional district by spreading upon their minutes by resolution such designation.

SOURCES: Codes, 1942, § 6909-57; Laws, 1966, ch. 477, § 1, eff from and after passage (approved June 16, 1966).

Cross References — Health care profession loans for mental health professionals, see § 37-143-13.

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

Establishment of regional commissions by regions designated or established under this section, see § 41-19-33.

Availability of financial assistance for care provided in an approved regional mental health/retardation center, see § 43-13-117.

§ 41-19-33. Regional commissions; establishment; duties and authority.

(1) Each region so designated or established under Section 41-19-31 shall establish a regional commission to be composed of members appointed by the boards of supervisors of the various counties in said region. It shall be the duty of such regional commission to administer mental health/retardation programs certified by the State Board of Mental Health. In addition, once designated and established as provided hereinabove, a regional commission shall have the following authority and shall pursue and promote the following general purposes:

- (a) To establish, own, lease, acquire, construct, build, operate and maintain mental illness, mental health, mental retardation, alcoholism and general rehabilitative facilities and services designed to serve the needs of the people of the region so designated; provided that the services supplied by

said regional commissions shall include those services determined by the Department of Mental Health to be necessary and may include, in addition to the above, services for persons with developmental and learning disabilities; for persons suffering from narcotic addiction and problems of drug abuse and drug dependence; and for the aging as designated and certified by the Department of Mental Health.

(b) To provide facilities and services for the prevention of mental illness, mental disorders, developmental and learning disabilities, alcoholism, narcotic addiction, drug abuse, drug dependence and other related handicaps or problems (including the problems of the aging) among the people of the region so designated, and for the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(c) To promote increased understanding of the problems of mental illness, mental retardation, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse and drug dependence and other related problems (including the problems of the aging) by the people of the region, and also to promote increased understanding of the purposes and methods of the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(d) To enter into contracts and to make such other arrangements as may be necessary, from time to time, with the United States government, the government of the State of Mississippi and such other agencies or governmental bodies as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, mental retardation, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) as designated and certified by the Department of Mental Health.

(e) To enter into contracts and make such other arrangements as may be necessary with any and all private businesses, corporations, partnerships, proprietorships or other private agencies, whether organized for profit or otherwise, as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, mental retardation, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) relating to minimum services established by the Department of Mental Health.

(f) To promote the general mental health of the people of the region.

(g) To pay the administrative costs of the operation of said regional commissions, including per diem for the members of said commission and its

employees, attorney's fees, if and when such are required in the opinion of said commission, and such other expenses of the commission as may be necessary. The Department of Mental Health standards and audit rules shall determine what administrative cost figures shall consist of for the purposes of this paragraph. Each regional commission shall submit a cost report annually to the Department of Mental Health in accordance with guidelines promulgated by the department.

(h) To employ and compensate any personnel that may be necessary to effectively carry out the programs and services established pursuant to the provisions of the aforesaid act, provided such person meets the standards established by the Department of Mental Health.

(i) To acquire whatever hazard, casualty or workers' compensation insurance that may be necessary for any property, real or personal, owned, leased or rented by said commissions, or any employees or personnel hired by the said commissions.

(j) To acquire professional liability insurance on all employees as may be deemed necessary and proper by the commission, and to pay, out of the funds of the commission, all premiums due and payable on account thereof.

(k) To provide and finance within their own facilities, or through agreements or contracts with other local, state or federal agencies or institutions, nonprofit corporations, or political subdivisions or representatives thereof, programs and services for the mentally ill, including treatment for alcoholics and promulgating and administering of programs to combat drug abuse and the mentally retarded.

(l) To borrow money from private lending institutions in order to promote any of the foregoing purposes. A commission may pledge collateral, including real estate, to secure the repayment of money borrowed under the authority of this paragraph. Any such borrowing undertaken by a commission shall be on terms and conditions that are prudent in the sound judgment of the members of the commission, and the interest on any such loan shall not exceed the amount specified in Section 75-17-105. Any money borrowed, debts incurred or other obligations undertaken by a commission, regardless of whether borrowed, incurred or undertaken before or after March 15, 1995, shall be valid, binding and enforceable if it or they are borrowed, incurred or undertaken for any purpose specified in this section and otherwise conform to the requirements of this paragraph.

(m) To acquire, own and dispose of real and personal property. Any real and personal property paid for with state and/or county appropriated funds must have the written approval of the Department of Mental Health and/or the county board of supervisors, depending on the original source of funding, before being disposed of under this paragraph.

(n) To enter into managed care contracts and make such other arrangements as may be deemed necessary or appropriate by the regional commission in order to participate in any managed care program. Any such contract or arrangement affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(o) To provide facilities and services on a discounted or capitated basis. Any such action when affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(p) To enter into contracts, agreements or other arrangements with any person, payor, provider or other entity, pursuant to which the regional commission assumes financial risk for the provision or delivery of any services, when deemed to be necessary or appropriate by the regional commission. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(q) To provide direct or indirect funding, grants, financial support and assistance for any health maintenance organization, preferred provider organization or other managed care entity or contractor, where such organization, entity or contractor is operated on a nonprofit basis. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(r) To form, establish, operate, and/or be a member of or participant in, either individually or with one or more other regional commissions, any managed care entity as defined in Section 83-41-403(c). Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(s) To meet at least annually with the board of supervisors of each county in its region for the purpose of presenting its total annual budget and total mental health/retardation services system.

(t) To provide alternative living arrangements for persons with serious mental illness, including, but not limited to, group homes for the chronically mentally ill.

(u) To make purchases and enter into contracts for purchasing in compliance with the public purchasing law, Sections 31-7-12 and 31-7-13, with compliance with the public purchasing law subject to audit by the State Department of Audit.

(v) To insure that all available funds are used for the benefit of the mentally ill, mentally retarded, substance abusers and developmentally disabled with maximum efficiency and minimum administrative cost. At any time a regional commission, and/or other related organization whatever it may be, accumulates surplus funds in excess of one-half ($\frac{1}{2}$) of its annual operating budget, the entity must submit a plan to the Department of Mental Health stating the capital improvements or other projects that require such surplus accumulation. If the required plan is not submitted within forty-five (45) days of the end of the applicable fiscal year, the Department of Mental Health shall withhold all state appropriated funds from such regional commission until such time as the capital improvement plan is submitted. If the submitted capital improvement plan is not accepted

by the department, the said surplus funds shall be expended by the regional commission in the local mental health region on group homes for the mentally ill, mentally retarded, substance abusers, children or other mental health/retardation services approved by the Department of Mental Health.

(w) Notwithstanding any other provision of law, to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee or volunteer shall provide a valid current social security number and/or driver's license number that will be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

(x) In general to take any action which will promote, either directly or indirectly, any and all of the foregoing purposes.

(2) The types of services established by the State Department of Mental Health that must be provided by the regional mental health/retardation centers for certification by the department, and the minimum levels and standards for those services established by the department, shall be provided by the regional mental health/retardation centers to children when such services are appropriate for children, in the determination of the department.

SOURCES: Codes, 1942, § 6909-58; Laws, 1966, ch. 477, § 2; Laws, 1973, ch. 384, § 1; Laws, 1984, ch. 495, § 16; reenacted and amended, 1985, ch. 474, § 25; Laws, 1986, ch. 438, § 25; Laws, 1987, ch. 483, § 26; Laws, 1988, ch. 442, § 23; Laws, 1989, ch. 537, § 22; Laws, 1990, ch. 518, § 23; Laws, 1991, ch. 618, § 22; Laws, 1992, ch. 491 § 23; Laws, 1995, ch. 410, § 1; Laws, 1996, ch. 342, § 1; Laws, 1996, ch. 463, § 1; Laws, 1997, ch. 587, § 3, eff July 1, 1997; Laws, 2003, ch. 415, § 1, eff from and after passage (approved Mar. 17, 2003.)

Editor's Note — Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the Mississippi Mental Health Reform Act of 1997."

Cross References — Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

JUDICIAL DECISIONS

1. In general.

Despite its state agency status, a regional mental health commission was required to adhere to the municipal zoning ordinances of the city when selecting a regional mental health facility site. *City of Hattiesburg v. Region XII Comm'n on Mental Health & Retardation*, 654 So. 2d 516 (Miss. 1995).

A regional mental health-mental retardation commission's purchase of liability insurance did not waive the commission's sovereign immunity. *Region VII, Mental Health-Mental Retardation Ctr. v. Isaac*, 523 So. 2d 1013 (Miss. 1988).

ATTORNEY GENERAL OPINIONS

A regional mental health commission may use incentive programs for its employees, so long as such programs are not based on past services. Jackson, June 29, 1992, A.G. Op. #92-0435.

Authority for mental illness and retardation facilities to enter into contracts for implementation or operation of programs is at Miss. Code Section 41-19-33(e). Jackson, June 11, 1993, A.G. Op. #93-0148.

Financing arrangements for mental illness and retardation facilities, if necessary, are authorized by Miss. Code Section 41-19-33(k). Jackson, June 11, 1993, A.G. Op. #93-0148.

State law does not empower Regional Mental Health Commission created pursuant to Miss. Code Section 41-19-33 to form private corporation. Jackson, June 11, 1993, A.G. Op. #93-0148.

Member of Regional Mental Health Commission presently serving is not prohibited from serving at same time as member of State Board of Mental Health, so long as he does not receive from Regional Mental Health Commission any compensation, including salary, per diem or expenses from funds allocated to it by State Board of Mental Health. Littlejohn Dec. 13, 1993, A.G. Op. #93-0815.

Section 41-19-33 allows regional mental health commissions to borrow money for any authorized purpose of the commission. There is no statutory requirement that the Commission publish notice to obtain bids for financing for the construction of an addition to an existing facility. Littlejohn, May 10, 1995, A.G. Op. #95-0158.

The Region VI Mental Health-Mental Retardation Commission under its broad grant of authority may, but is not required to, provide such benefits as health insurance to its employees and pay the premiums therefore in whole or in part as it deems proper. Oakes, August 28, 1998, A.G. Op. #98-0522.

Simultaneous service on a local school board, the Ethics Commission and a Regional Mental Health Commission is not a violation of Miss. Const., Art. I, § 2. Brown, Jan. 23, 2004, A.G. Op. 04-0012.

A regional commission would not be authorized to make pharmacy services available to an employee who is not a client. Smith, Oct. 27, 2006, A.G. Op. 06-0531.

A county central vehicle repair department may provide repair and maintenance services to a regional mental health center pursuant to an interlocal agreement. Ross, Dec. 8, 2006, A.G. Op. 06-0594.

§ 41-19-35. Appointment, term, and compensation of regional commission members.

The board of supervisors of each participating county in the program shall appoint one (1) member to represent its county on the regional commission in its respective region for a term of four (4) years. Any compensation of such members shall be paid by the regional commission, in its discretion, from any funds available.

SOURCES: Codes, 1942, § 6909-59; Laws, 1966, ch. 477, § 3, eff from and after passage (approved June 16, 1966).

Cross References — Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

§ 41-19-37. Location of facilities or services in regions.

The location of any mental illness and mental retardation facilities or services in any of the regions shall be determined by the regional commission.

However, such location and such services shall not conflict with the state plan for services or facilities developed by the department of mental health.

SOURCES: Codes, 1942, § 6909-60; Laws, 1966, ch. 477, § 4; Laws, 1974, ch. 567, § 12, eff from and after passage (approved April 23, 1974).

Cross References — Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

JUDICIAL DECISIONS

1. In general.

Despite its state agency status, a regional mental health commission was required to adhere to the municipal zoning ordinances of the city when selecting a

regional mental health facility site. *City of Hattiesburg v. Region XII Comm'n on Mental Health & Retardation*, 654 So. 2d 516 (Miss. 1995).

§ 41-19-38. Mental health facilities subject to local zoning ordinances or regulations.

Any regional mental health or mental retardation commission established according to the provisions of Section 41-19-31 et seq., Mississippi Code of 1972, shall not construct or operate any facility in an area in violation of any local zoning ordinances or regulations.

SOURCES: Laws, 1995, ch. 528, § 16, eff from and after passage (approved April 5, 1995).

§ 41-19-39. Financial support for facilities or services for individuals with mental illness or mental retardation; tax levy.

After a plan for mental illness and mental retardation facilities or services has been submitted by any regional commission and approved by the Department of Mental Health, the said regional commission may request the boards of supervisors of the various counties in the region to levy a special tax for the construction, operation and maintenance of said mental illness and mental retardation facilities or services in such region. The boards of supervisors of the counties desiring to participate in the program in each region are hereby authorized to use any available funds and, if necessary, to levy a special tax, not to exceed two (2) mills, for the construction, operation and maintenance of the said mental illness and mental retardation facilities or services provided for and authorized in Sections 41-19-31 through 41-19-39.

The governing authority of any municipality in the region may, upon resolution spread upon its minutes, make a voluntary contribution for the construction, operation or maintenance of the mental illness and mental retardation facilities in the region in which the municipality lies.

In addition to the purposes for which the county tax levies and municipal contributions may be used as authorized under this section, the county tax

levies and municipal contributions may also be used for repayment of any loans from private lending institutions made by the commission under the authority of Section 41-19-33(l).

SOURCES: Codes, 1942, § 6909-61; Laws, 1966, ch. 477, § 4; Laws, 1972, ch. 307, § 1; Laws, 1974, ch. 567, § 13; Laws, 1995, ch. 410, § 2, eff from and after passage (approved March 15, 1995).

Cross References — Local ad valorem tax levies, generally, see §§ 27-39-301 et seq. Reimbursement under the Medicaid law for mental health services provided by a center established under §§ 41-19-31 through 41-19-39, see § 43-13-117.

Availability of financial assistance for care provided in an approved regional mental health/retardation center, see § 43-13-117.

ATTORNEY GENERAL OPINIONS

Since the regional mental health commission was selected by boards of supervisors of various counties in region and members were appointed by such boards, commission may invest any surplus funds as directed by Section 19-9-29. Stewart, Sept. 17, 1992, A.G. Op. #92-0672.

Section 41-19-39 is sufficiently broad to allow county to contribute real estate, as well as funds, to mental health commission which county supports. Leggett, Feb. 9, 1994, A.G. Op. #93-1023.

§ 41-19-41. Commitment of patients to regional mental health and mental retardation centers.

Any regional mental health or mental retardation facility or service established and operated according to the provisions set forth in Sections 41-19-31 through 41-19-39, is eligible to admit and treat patients committed by either the chancellors or chancery clerks in the same manner as is provided by the laws of Mississippi for commitment to the state mental institutions.

SOURCES: Codes, 1942, § 6909-71; Laws, 1968, ch. 439, § 1, eff from and after passage (approved July 8, 1968).

Cross References — Procedures for and individual's procedural and substantive rights during the initial involuntary commitment hearing and thereafter, see §§ 41-21-61 et seq.

Definition of mentally retarded person, see § 41-21-61.

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Length of initial involuntary commitment of mentally ill or mentally retarded persons, see § 41-21-73.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Voluntary admission of mentally ill and retarded persons of particular age or marital status, see § 41-21-103.

Criminal sanctions for unlawfully conspiring to commit an individual to a treatment facility, see §§ 41-21-107 and 97-3-13.

RESEARCH REFERENCES

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-19-43. Expenses of chancery clerk and sheriff.

Whenever it is necessary to commit and transport any eligible patient to a regional mental health or mental retardation facility for treatment or care, the chancery clerk and sheriff shall be entitled to expenses as provided for by the laws of Mississippi for commitment and transportation to state mental institutions.

SOURCES: Codes, 1942, § 6909-72; Laws, 1968, ch. 439, § 2, eff from and after passage (approved July 8, 1968).

INTERAGENCY COMMISSION ON MENTAL ILLNESS AND MENTAL
RETARDATION
[REPEALED]

SEC.

41-19-61 through 41-19-69. Repealed.

§§ 41-19-61 through 41-19-69. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

[Laws, 1966, ch. 476, §§ 1-5]

Editor's Note — Former § 41-19-61 created and set out the membership of the Mississippi Interagency Commission on Mental Illness and Mental Retardation.

Former § 41-19-63 dealt with the compensation of members of the interagency commission, the election of officers, and the commission's accounting system.

Former § 41-19-65 detailed the purposes and functions of the interagency commission.

Former § 41-19-67 dealt with the scope of authority of the interagency commission.

Former § 41-19-69 authorized the interagency commission to employ an executive director and staff, to receive federal funds and grants, develop projects, enter into contracts, and expend funds.

The authority, personnel and property of the abolished Mississippi Interagency Commission on Mental Illness and Mental Retardation were transferred to the state board of mental health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

COORDINATION OF SERVICES TO MENTALLY ILL AND MENTALLY
RETARDED
[REPEALED]

SEC.

41-19-81. Repealed.

§ 41-19-81. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

[Laws, 1962, ch. 417, §§ 1, 2]

Editor's Note — Former § 41-19-81 empowered the board of trustees of mental institutions to coordinate services to the mentally ill and mentally retarded, ordered the cooperation of other state departments and agencies, and set out the purpose and intent of the section.

The authority, personnel and property of the abolished board of trustees of mental institutions were transferred to the state board of mental health. See § 41-4-11. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and control of existing state agencies until July 1, 1974."

**CONTRIBUTIONS BY CERTAIN LOCAL GOVERNMENTS TO
NONPROFIT CORPORATIONS ASSISTING CHILDREN WITH MENTAL
RETARDATION**

SEC.

41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with mental retardation.

§ 41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with mental retardation.

(1) Any board of supervisors, mayor and board of selectmen of any city in which Mississippi State Highway No. 50 and United States Highway No. 45 Alternate intersect, are hereby authorized and empowered, in their discretion, to contribute a sum not to exceed Ten Thousand Dollars (\$10,000.00) each to a nonprofit corporation, the purpose of which is to develop and operate programs for mentally retarded children. The contribution may be made from the general fund of such county and/or city wherein funds may be available.

(2) To acquire the funds in which to make such contribution, the board of supervisors of such county and/or mayor and board of selectmen of such city are hereby authorized and empowered, in its discretion, to set aside, appropriate and expend moneys from the general fund.

SOURCES: Laws, 1973, ch. 454, §§ 1-3; Laws, 1986, ch. 400, § 23, eff from and after October 1, 1986.

Cross References — Local ad valorem tax levies generally, see §§ 27-39-301 et seq.

ELLISVILLE STATE SCHOOL

SEC.

41-19-101. Repealed.

41-19-103. Establishment of the Ellisville State School.

41-19-105 and 41-19-107. Repealed

41-19-108. Construction and equipping of certain Ellisville State School buildings and facilities.

41-19-109. Repealed.

41-19-111. Repealed.

41-19-112. Administration by State Board of Mental Health.

41-19-113. Repealed.

41-19-114. Assessment of support and maintenance costs.

41-19-115. Repealed.

41-19-116. Criminal offenses and penalties.

41-19-117. Repealed.

41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to mental retardation.

41-19-119. Repealed.

41-19-121. Board for director.

§ 41-19-101. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

[Codes, Hemingway's 1921 Supp. § 5728b; 1930, § 7269; 1942, § 6764; Laws, 1920, ch. 210; Laws, 1984, ch. 472, § 3]

Editor's Note — Former § 41-19-101 defined “feeble-minded” and “poor person”.

§ 41-19-103. Establishment of the Ellisville State School.

The Ellisville State School established by Chapter 210, Laws of Mississippi 1920, is recognized as now existing and shall hereafter be known under the name of Ellisville State School for the care and treatment of persons with mental retardation. The school shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The school shall be under the direction and control of the State Board of Mental Health.

SOURCES: Codes, Hemingway's 1921 Supp. § 5728c; 1930, § 7270; 1942, § 6765; Laws, 1920, ch. 210; Laws, 1930, ch. 30; Laws, 2008, ch. 442, § 43, eff from and after July 1, 2008.

Editor's Note — Laws of 1992, ch. 324, § 1, eff from and after passage (approved April 20, 1992), provides as follows:

“SECTION 1. Ellisville State School, a State Department of Mental Health facility, is authorized and empowered to purchase, for a price of Fourteen Thousand Four Hundred Six Dollars (\$14,406.00), from First South Production Credit Association, thirty-two and one-half (32-½) acres of land, more or less, lying south of Interstate 59 in the W/2 of the NW/4 of Section 18, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi. The purchase shall be made from funds currently appropriated to Ellisville State School for the fiscal year 1991-1992.”

Amendment Notes — The 2008 amendment rewrote the section.

Cross References — Facility being under the jurisdiction and control of the state department of mental health, see § 41-4-11(2).

Definition of mentally retarded person, see § 41-21-61.

RESEARCH REFERENCES

ALR. Application, to drug or narcotic records maintained by druggist or physician, of “required records” exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§§ 41-19-105 and 41-19-107. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-105. [Codes, Hemingway’s 1921 Supp. § 5728i; 1930, § 7275; 1942, § 6766; Laws, 1920, ch. 210; Laws, 1970, ch. 374, § 4; Laws, 1984, ch. 472, § 4, eff from and after July 1, 1984.]

§ 41-19-107. [Codes, Hemingway’s 1921 Supp. § 5728n; 1930, § 7277; 1942, § 6767; Laws, 1920, ch. 210.]

Editor’s Note — Former § 41-19-105 provided for the plan of Ellisville State School. Former § 41-19-107 required the director of Ellisville State School to keep certain records.

§ 41-19-108. Construction and equipping of certain Ellisville State School buildings and facilities.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of Ellisville State School. The general design of the school and all construction plans shall be approved and recommended by the State Department of Mental Health.

SOURCES: Laws, 2008, ch. 442, § 44, eff from and after July 1, 2008.

§ 41-19-109. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-109. [Codes, Hemingway’s 1921 Supp. § 5728o; 1930, § 7278; 1942, § 6768; Laws, 1920, ch. 210.]

Editor’s Note — Former § 41-19-109 authorized the director of Ellisville State School to sell certain agricultural and manufactured products.

§ 41-19-111. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

§ 41-19-111. [Codes, Hemingway’s 1921 Supp. § 5728p; 1930, § 7279; 1942, § 6769; Laws, 1920, ch. 210]

Editor's Note — Former § 41-19-111 pertained to the commitment, care and custody of a child who was feeble-minded.

§ 41-19-112. Administration by State Board of Mental Health.

Ellisville State School shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the school shall be promulgated by the board.

SOURCES: Laws, 2008, ch. 442, § 45, eff from and after July 1, 2008.

§ 41-19-113. Repealed.

Repealed by Laws, 1984, ch. 477, § 26, eff from and after July 1, 1984.

§ 41-19-113. [Codes, Hemingway's 1921 Supp. § 5728y; 1930, § 7288; 1942, § 6778; Laws, 1920, ch. 210]

Editor's Note — Former § 41-19-113 pertained to the transfer of feeble-minded and insane patients.

§ 41-19-114. Assessment of support and maintenance costs.

Persons admitted to Ellisville State School shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Laws, 2008, ch. 442, § 46, eff from and after July 1, 2008.

Cross References — Provisions for the reimbursement of state institutions for hospitalization and treatment, see §§ 41-7-71 et seq.

For comparable provisions with respect to North Mississippi Regional Center, South Mississippi Regional Center, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-13, 41-19-153, 41-19-209 and 41-19-241, respectively.

§ 41-19-115. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-115. [Codes, Hemingway's 1921 Supp. § 5728z; 1930, § 7289; 1942, § 6779; Laws, 1920, ch. 210.]

Editor's Note — Former § 41-19-115 provided discharge procedures for Ellisville patients.

§ 41-19-116. Criminal offenses and penalties.

Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged to be a person of mental retardation, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of Ellisville State School, or (c) unlawfully brings any firearm, deadly weapon or explosive into the school or its grounds, or

passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

SOURCES: Laws, 2008, ch. 442, § 47, eff from and after July 1, 2008.

Cross References — For comparable provisions with respect to North Mississippi Regional Center and South Mississippi Regional Center, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-15, 41-19-155, 41-19-211 and 41-19-243, respectively.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-117. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-117. [Codes, Hemingway's 1921 Supp. § 5728a1; 1930, § 7290; 1942, § 6780; Laws, 1920, ch. 210.]

Editor's Note — Former § 41-19-117 provided for habeas corpus proceedings for Ellisville patients.

§ 41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to mental retardation.

Ellisville State School is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to mental retardation.

SOURCES: Laws, 2008, ch. 442, § 48, eff from and after July 1, 2008.

§ 41-19-119. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-19-119. [Codes, Hemingway's 1921 Supp. § 5728d1; 1930, § 7293; 1942, § 6783; Laws, 1920, ch. 210.]

Editor's Note — Former § 41-19-119 authorized the board of trustees to accept gifts for the support of Ellisville State School.

§ 41-19-121. Board for director.

The director of Ellisville State School may receive free lodging in his institution for himself and his family, but not free board, nor free supplies from the school.

SOURCES: Codes, 1930, § 7294; 1942, § 6784; Laws, 1928, chs. 66, 68; Laws, 2008, ch. 442, § 49, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote the section.

Cross References — Heads of institutions being selected by state board of mental health upon recommendation of the executive director, see § 41-4-11.

SOUTH MISSISSIPPI REGIONAL CENTER

SEC.

41-19-141. Declaration of purpose.

41-19-143. Location of center.

41-19-145. Construction and equipping of center.

41-19-147. Management and operation of center.

41-19-149 and 41-19-151. Repealed.

41-19-153. Reimbursement.

41-19-155. Penalties.

41-19-157. Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to mental retardation.

§ 41-19-141. Declaration of purpose.

The purpose of Sections 41-19-141 through 41-19-157 is to create, construct, equip and maintain a center to be located in South Mississippi for the care and treatment of the mentally retarded, which shall be known as the South Mississippi Regional Center.

SOURCES: Laws, 1974, ch. 417, § 1; Laws, 1992, ch. 336, § 5, eff from and after July 1, 1992.

Cross References — Voluntary admissions of mentally retarded persons, see § 41-21-103.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§ 41-19-143. Location of center.

The center shall be located on a site selected by the Board of Trustees of Mental Institutions and approved by the Mississippi State Building Commission. The center, however, shall be located as near as possible to an urban area or institution having adequate medical and hospital facilities and shall embrace sufficient land for such agricultural activities as the board may deem necessary for the operation of the institution.

Out of funds provided therefor by the Legislature or from any sources, the state building commission is hereby authorized to purchase or acquire the necessary land for the location of the center, or it may also acquire the land by gift, deed, transfer, or other legitimate means, or the center may be located on

land belonging to the state or one of its political subdivisions; however, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the Board of Trustees of Mental Institutions in carrying out the provisions of Sections 41-19-141 through 41-19-157.

SOURCES: Laws, 1974, ch. 417, § 2; Laws, 1992, ch. 336, § 6, eff from and after July 1, 1992.

Editor's Note — The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — State building commission, see §§ 31-11-1 et seq.

Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

§ 41-19-145. Construction and equipping of center.

With funds provided by the legislature, by direct appropriation or authorized bond issue, with federal matching funds, or any other available funds, the Mississippi State Building Commission is hereby authorized to construct and equip the necessary residential and service buildings and other facilities to care for approximately five hundred (500) residents. The general design of the center and all construction plans shall be approved and recommended by the board of trustees of mental institutions.

SOURCES: Laws, 1974, ch. 417, § 3, eff from and after passage (approved March 26, 1974).

Editor's Note — The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

§ 41-19-147. Management and operation of center.

The center shall be administered by the board of trustees of mental institutions, as provided for in Sections 41-5-31 through 41-5-55, inclusive, and

all subsequent laws enacted which define the powers and authority of the board. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for the mentally retarded administered by the board, unless they are in conflict with the provisions of the above-mentioned laws.

SOURCES: Laws, 1974, ch. 417, § 4, eff from and after passage (approved March 26, 1974).

Editor's Note — This section contains a reference to §§ 41-5-31 through 41-5-55. All of these sections, except for §§ 41-5-44 and 41-5-55, were repealed by Laws of 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

Section 41-5-55, referred to in this section, was repealed by Laws of 2008, ch. 442, § 50, effective from and after July 1, 2008.

The board of trustees of mental institutions, referred to in this section, was abolished as of July 1, 1974 and its functions transferred to the state board of mental health and the state department of mental health, by Laws of 1974, ch. 567, § 6, effective from and after April 23, 1974. See § 41-4-11.

Cross References — Creation of state board of mental health to act in lieu of abolished board of trustees of mental institutions, see §§ 41-4-1 et seq.

Facility being under the jurisdiction and control of the state department of mental health, see § 41-4-11(2).

Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

Definition of mentally retarded person, see § 41-21-61.

Voluntary admissions of mentally retarded persons, see § 41-21-103.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 6 et seq. **CJS.** 41 C.J.S., Hospitals §§ 1, 8-10.

§§ 41-19-149 and 41-19-151. Repealed.

Repealed by Laws, 1984, ch. 477, § 27, eff from and after July 1, 1984.

§ 41-19-149. [Laws, 1974, ch. 417, § 5]

§ 41-19-151. [Laws, 1974, ch. 417, § 6]

Editor's Note — Former § 41-19-149 specified the eligibility for admission.

Former § 41-19-151 specified admission procedures.

§ 41-19-153. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Laws, 1974, ch. 417, § 7; Laws, 1992, ch. 336, § 7, eff from and after July 1, 1992.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, Boswell Regional Center, and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-209 and 41-19-241, respectively.

§ 41-19-155. Penalties.

Any person who: (1) under the provisions of Sections 41-19-141 through 41-19-157 knowingly and unlawfully or improperly causes a person to be adjudged mentally retarded; (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center; or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds or passes any thereof to a resident, employee or officer of the center is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two hundred dollars (\$200.00), imprisonment for not more than one (1) year, or both.

SOURCES: Laws, 1974, ch. 417, § 8, eff from and after passage (approved March 26, 1974).

Editor's Note — Former §§ 41-19-149 and 41-19-151, referred to in this section, were repealed by Laws of 1984, ch. 477, § 27, effective from and after July 1, 1984.

Cross References — Criminal sanctions for unlawfully conspiring to commit an individual to a mental treatment facility, see § 41-21-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-157. Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to mental retardation.

The South Mississippi Regional Center is hereby designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to mental retardation.

SOURCES: Laws, 1974, ch. 417, § 9; Laws, 1992, ch. 336, § 8, eff from and after July 1, 1992.

BOSWELL REGIONAL CENTER

| | |
|------------|--|
| Sec. | |
| 41-19-201. | Declaration of purpose. |
| 41-19-203. | Location, construction, equipping and administration of center. |
| 41-19-205. | Eligibility for admission. |
| 41-19-207. | Admission procedures. |
| 41-19-209. | Reimbursement. |
| 41-19-211. | Penalties. |
| 41-19-213. | Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to mental retardation. |

§ 41-19-201. Declaration of purpose.

The purpose of Sections 41-19-201 through 41-19-213 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of the mentally retarded, which shall be known as the Boswell Regional Center. Sections 41-19-201 through 41-19-213 shall not supersede

Section 41-5-44, Mississippi Code of 1972, but shall be supplemental to that Section.

SOURCES: Laws, 1982, ch. 360, § 1(1); Laws, 1992, ch. 336, § 9, eff from and after July 1, 1992.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-1, 41-19-141 and 41-19-231, respectively.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 4.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§ 41-19-203. Location, construction, equipping and administration of center.

The center shall be located on the site of the Tuberculosis Sanatorium of Mississippi.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the state building commission is hereby authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of the mentally retarded. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1982, ch. 360, § 1 (2)-(4); Laws, 1992, ch. 336, § 10, eff from and after July 1, 1992.

Editor's Note — Section 31-11-1 provides that wherever the term "state building commission" or "building commission" appears in the laws of the state of Mississippi, it shall be construed to mean the governor's office of general services. Section 7-1-451, however, provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — State board of mental health, see §§ 41-4-3 et seq.

Facility being under jurisdiction and control of state department of mental health, see § 41-4-11(2).

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-3 through 41-19-7, 41-19-108 and 41-19-112, §§ 41-19-143 through 41-19-147 and §§ 41-19-233 and 41-19-235, respectively.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 6 et seq.

CJS. 41 C.J.S., Hospitals §§ 1, 8-10.

§ 41-19-205. Eligibility for admission.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year prior to the date of admission; and

(b) He is at least five (5) years of age and he is so mentally retarded that he is incapable of managing himself or his affairs, or he is retarded to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the board of mental health, upon the recommendation of the director, because of having an exceptional handicap.

SOURCES: Laws, 1982, ch. 360, § 2; Laws, 1990, ch. 370, § 1; Laws, 1992, ch. 336, § 11, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 13. **CJS.** 41 C.J.S., Hospitals § 11-14.

§ 41-19-207. Admission procedures.

Admission of eligible person to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to be mentally retarded may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to be mentally retarded, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to be mentally retarded and eligible to remain at the center.

(b) If any mentally retarded person is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Mentally retarded persons may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state

agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

SOURCES: Laws, 1982, ch. 360, § 3; Laws, 1990, ch. 370, § 2; Laws, 1992, ch. 336, § 12, eff from and after July 1, 1992.

Cross References — Proceedings for commitment to state mental institutions, see §§ 41-21-61 et seq.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 13. **CJS.** 41 C.J.S., Hospitals § 11-14.

§ 41-19-209. Reimbursement.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Laws, 1982, ch. 360, § 4; Laws, 1992, ch. 336, § 13, eff from and after July 1, 1992.

Cross References — Provisions for the reimbursement of state institutions for hospitalization and treatment, see §§ 41-7-71 et seq.

For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153 and 41-19-241, respectively.

§ 41-19-211. Penalties.

Any person who (a) under the provisions of Section 41-19-207, knowingly and unlawfully or improperly causes a person to be adjudged mentally retarded, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1982, ch. 360, § 5, eff from and after July 1, 1982.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-15, 41-19-116, 41-19-155, and 41-19-243, respectively.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-213. Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to mental retardation.

The Boswell Regional Center is hereby designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to mental retardation.

SOURCES: Laws, 1982, ch. 360, § 6; Laws, 1992, ch. 336, § 14, eff from and after July 1, 1992.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-17, 41-19-118, 41-19-157, and 41-19-245, respectively.

HUDSPETH REGIONAL CENTER

SEC.

- 41-19-231. Purpose of Sections 41-19-231 through 41-19-245.
- 41-19-233. Site of center.
- 41-19-235. Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.
- 41-19-237. Eligibility for admission to center.
- 41-19-239. Admission procedures.
- 41-19-241. Patient support and maintenance costs.
- 41-19-243. Criminal offenses.
- 41-19-245. Center designated state agency.

§ 41-19-231. Purpose of Sections 41-19-231 through 41-19-245.

The purpose of Sections 41-19-231 through 41-19-245 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of the mentally retarded, which shall be known as the Hudspeth Regional Center.

SOURCES: Laws, 1990, ch. 475, § 1; Laws, 1992, ch. 336, § 15, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 1, 2 et seq.
9A Am. Jur. Legal Forms 2d, Incompetent Persons, §§ 141:1 et seq.

14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 1 et seq. (initiation of proceedings to determine competency).

26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-19-233. Site of center.

The center shall be located on the site of the Mississippi State Hospital previously known as the Whitfield Annex.

SOURCES: Laws, 1990, ch. 475, § 2; Laws, 1992, ch. 336, § 16, eff from and after July 1, 1992.

§ 41-19-235. Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Department of Finance and Administration is hereby authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of the mentally retarded. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1990, ch. 475, § 3, eff from and after July 1, 1990.

Cross References — State Board of Mental Health, see § 41-4-3.

§ 41-19-237. Eligibility for admission to center.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year before the date of admission; and

(b) He is at least five (5) years of age and he is so mentally retarded that he is incapable of managing himself or his affairs, or he is retarded to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the Board of Mental Health, upon the recommendation of the director, because of having an exceptional handicap.

SOURCES: Laws, 1990, ch. 475, § 4; Laws, 1992, ch. 336, § 17, eff from and after July 1, 1992.

Cross References — Procedures for admission to center, see § 41-19-239.

Penalty for unlawfully or improperly causing person to be adjudged mentally retarded, see § 41-19-243.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 1, 2 et seq.

§ 41-19-239. Admission procedures.

Admission of eligible persons to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to be mentally retarded may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to be mentally retarded, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to be mentally retarded and eligible to remain at the center.

(b) If any mentally retarded person is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Mentally retarded persons may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

SOURCES: Laws, 1990, ch. 475, § 5; Laws, 1992, ch. 336, § 18, eff from and after July 1, 1992.

Cross References — Eligibility for admission to center, see § 41-19-237.

Commitment proceedings, see § 41-21-61 et seq.

Patients' rights, see § 41-21-102.

RESEARCH REFERENCES

ALR. Modern status of rules as to standard of proof required in civil commitment proceedings. 97 A.L.R.3d 780.

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

9A Am. Jur. Legal Forms 2d, Incompetent Persons, §§ 141:11-141:15.

14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 1-28 (initiation of proceedings to determine competency

status); Forms 61-76 (examination and hearing to determine competency status). 26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-19-241. Patient support and maintenance costs.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Laws, 1990, ch. 475, § 6; Laws, 1992, ch. 336, § 19, eff from and after July 1, 1992.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153, and 41-19-209, respectively.

Payment of costs of commitment proceedings and institutionalization, see § 41-21-79.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.

9A Am. Jur. Legal Forms 2d, Incompetent Persons, §§ 141:34-141:37.

14 Am. Jur. Pl & Pr Forms, (Rev), Incompetent Persons, Forms 181-214 (costs of incompetency proceedings and expenses of support and treatment of incompetent).

§ 41-19-243. Criminal offenses.

ny person who (a) under the provisions of Section 41-19-237, knowingly and unlawfully or improperly causes a person to be adjudged mentally retarded, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1990, ch. 475, § 7, eff from and after July 1, 1990.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

finement in mental hospital. 16 A.L.R. Fed. 440.

§ 41-19-245. Center designated state agency.

The Hudspeth Regional Center is hereby designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to mental retardation.

SOURCES: Laws, 1990, ch. 475, § 8; Laws, 1992, ch. 336, § 20, eff from and after July 1, 1992.

**NORTH MISSISSIPPI STATE HOSPITAL AND SOUTH MISSISSIPPI
STATE HOSPITAL**

- SEC.
- 41-19-251. North Mississippi State Hospital and South Mississippi State Hospital.
 - 41-19-253. Location sites selected by State Board of Mental Health.
 - 41-19-255. Administration by State Board of Mental Health.
 - 41-19-257. Eligibility criteria for admission to the facilities.
 - 41-19-259. Support and maintenance costs.
 - 41-19-261. Criminal penalties for certain actions in connection with the facilities or their patients.
 - 41-19-263. North Mississippi State Hospital and South Mississippi State Hospital designated as state agencies.

§ 41-19-251. North Mississippi State Hospital and South Mississippi State Hospital.

The purpose of Sections 41-19-251 et seq. is to create, construct, equip, and maintain two (2) facilities for the acute care treatment of persons with mental illness who have been committed by the chancery court pursuant to Section 41-21-61 et seq., which shall be known as the North Mississippi State Hospital and South Mississippi State Hospital. The South Mississippi State Hospital shall not be constructed or established until such time as sufficient funds have been appropriated or otherwise made available for that purpose by the Legislature.

SOURCES: Laws, 1995, ch. 545, § 1, eff from and after July 1, 1995.

§ 41-19-253. Location sites selected by State Board of Mental Health.

The facilities shall be located on sites selected by the State Board of Mental Health and approved by the Mississippi Department of Finance and Administration. One (1) facility shall be located in the northern half of the state near an urban area or institution having adequate medical and hospital facilities, and one (1) facility shall be located in the southern half of the state near an urban area or institution having adequate medical and hospital facilities.

SOURCES: Laws, 1995, ch. 545, § 2, eff from and after July 1, 1995.

§ 41-19-255. Administration by State Board of Mental Health.

(1) Out of funds provided therefor by the Legislature or from any other sources, the Department of Finance and Administration is authorized to purchase or acquire the necessary land for the location of the facilities; or the Department of Finance and Administration may acquire the land by gift, deed, transfer or other legitimate means; or the facilities may be located on land belonging to the state or one of its political subdivisions. However, any such land selected shall be transferred or deeded to the State of Mississippi for the sole use of the State Board of Mental Health in carrying out the provisions of Sections 41-19-251 et seq. The general design of the facilities and all construction plans shall be approved and recommended by the State Department of Mental Health.

(2) The facilities shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1995, ch. 545, § 3, eff from and after July 1, 1995.

§ 41-19-257. Eligibility criteria for admission to the facilities.

Persons who have attained the age of eighteen (18) years, who have been determined to be a mentally ill person as defined in Section 41-21-61 and who have been committed for treatment by the chancery court pursuant to Section 41-21-61 et seq. shall be eligible for acute treatment at the facilities.

SOURCES: Laws, 1995, ch. 545, § 4, eff from and after July 1, 1995.

§ 41-19-259. Support and maintenance costs.

Persons admitted to the facilities shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

SOURCES: Laws, 1995, ch. 545, § 5, eff from and after July 1, 1995.

Cross References — For comparable provisions with respect to North Mississippi Regional Center, Ellisville State School, South Mississippi Regional Center and Hudspeth Regional Center, see §§ 41-19-13, 41-19-114, 41-19-153, and 41-19-209, respectively.

§ 41-19-261. Criminal penalties for certain actions in connection with the facilities or their patients.

Any person who (a) under the provisions of Sections 41-19-251 et seq. knowingly and unlawfully or improperly causes a person to be adjudged mentally ill, (b) procures the escape of a legally committed patient or knowingly conceals an escaped legally committed resident of the facility, or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to patient, employee or officer of the facility,

is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1995, ch. 545, § 6, eff from and after July 1, 1995.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-19-263. North Mississippi State Hospital and South Mississippi State Hospital designated as state agencies.

The North Mississippi State Hospital and the South Mississippi State Hospital are designated as state agencies for carrying out the purposes of any act of the Congress of the United States of America existing on July 1, 1995, or enacted at any time after July 1, 1995, that pertains to mental illness.

SOURCES: Laws, 1995, ch. 545, § 7, eff from and after July 1, 1995.

CENTRAL MISSISSIPPI RESIDENTIAL CENTER

SEC.

- 41-19-271. Central Mississippi Residential Center established; purpose.
- 41-19-273. Location and administration.
- 41-19-275. Persons served.
- 41-19-277. Support and maintenance costs.
- 41-19-279. Possessing deadly weapon or explosive on grounds.
- 41-19-281. Center as state agency for carrying out purposes of Congressional acts.

§ 41-19-271. Central Mississippi Residential Center established; purpose.

The purpose of Sections 41-19-271 through 41-19-281 is to create, equip, and maintain a residential facility for adults with chronic mental illness which shall be known as the Central Mississippi Residential Center.

SOURCES: Laws, 1998, ch. 317, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 and the language of this section was revised accordingly pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-273. Location and administration.

The center shall be located at the old Clarke College property in the City of Newton, and it shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1998, ch. 317, § 2, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-275. Persons served.

The center shall serve persons who have attained the age of twenty-one (21) years with chronic mental illness who would benefit from a structured living environment.

SOURCES: Laws, 1998, ch. 317, § 3, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-277. Support and maintenance costs.

Persons admitted to the center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state facilities.

SOURCES: Laws, 1998, ch. 317, § 4, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-279. Possessing deadly weapon or explosive on grounds.

Any person who knowingly brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1998, ch. 317, § 5, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281

pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-19-281. Center as state agency for carrying out purposes of Congressional acts.

The center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America existing on July 1, 1998, or enacted at any time after July 1, 1998, that pertains to mental illness.

SOURCES: Laws, 1998, ch. 317, § 6, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 317, §§ 1-6 enacted Sections 41-19-261 through 41-19-271. However, since Sections 41-19-261 and 41-19-263 previously existed, the sections enacted by chapter 317 were renumbered as 41-19-271 through 41-19-281 pursuant to the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

SPECIALIZED TREATMENT FACILITY IN HARRISON COUNTY

SEC.

41-19-291. Specialized Treatment Facility for the Emotionally Disturbed in Harrison County; admissions; construction; funding.

§ 41-19-291. Specialized Treatment Facility for the Emotionally Disturbed in Harrison County; admissions; construction; funding.

(1) The Specialized Treatment Facility for the Emotionally Disturbed, located in Harrison County, Mississippi, is recognized as now existing and shall be for the care and treatment of persons with mental illness. The facility shall have the power to receive and hold property, real, personal, and mixed, as a body corporate. The facility shall be under the direction and control of the State Board of Mental Health.

(2) Admissions shall be limited to mentally or emotionally disturbed adolescents who have been committed to the facility by a youth court judge or chancellor as provided in Section 41-21-109, or who are voluntarily admitted to the facility.

(3) With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of the Specialized Treatment Facility for the Emotionally Disturbed. The general design of the facility and all construction plans shall be approved and recommended by the State Department of Mental Health.

(4) The Specialized Treatment Facility for the Emotionally Disturbed shall be administered by the State Board of Mental Health. Provisions relating

to the admission and care of residents at the facility shall be promulgated by the board.

(5) The Specialized Treatment Facility for the Emotionally Disturbed is authorized to establish and operate a school to meet the educational needs of its patients.

(6) Persons admitted to the Specialized Treatment Facility for the Emotionally Disturbed shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

(7) Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged mentally ill, (b) procures the escape of a legally committed patient or knowingly conceals an escaped legally committed patient of the facility or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), or more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

(8) The Specialized Treatment Facility for the Emotionally Disturbed is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to mental illness.

(9) If no funding for the Specialized Treatment Facility for the Emotionally Disturbed is provided by state appropriation, the Department of Mental Health may lease the facility to carry out the purposes of the facility as provided in this section and Section 41-21-109. Before the facility may be leased, the department, in conjunction with the Bureau of Building, Grounds and Real Property Management of the Department of Finance and Administration, shall publicly issue requests for proposals, advertised in the same manner as provided in Section 31-7-13 for seeking competitive sealed bids. The requests for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and any other matters as the department and bureau determine to be appropriate for inclusion. Upon receiving responses to the request for proposals, the department and bureau shall select the most qualified proposal or proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the best value and overall benefits to the state, and any other relevant factors determined to be appropriate, and from those proposals, shall negotiate and enter a contract or contracts for the lease of the facility with one or more of the persons or firms submitting proposals. However, if the department and bureau deem none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated.

(10) If the Specialized Treatment Facility for the Emotionally Disturbed is leased under subsection (9) of this section, the lessee of the facility must give first priority in hiring employees for the facility to the current employees at the

facility. This condition must be included as one (1) of the specifications in the request for proposals for leasing the facility.

SOURCES: Laws, 2002, ch. 527, § 1; Laws, 2009, ch. 563, § 11, eff from and after passage (approved May 13, 2009.)

Amendment Notes — The 2009 amendment added (9) and (10).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

MISSISSIPPI ADOLESCENT CENTER IN BROOKHAVEN

SEC.

41-19-301. Mississippi Adolescent Center for juveniles with mental retardation in Brookhaven; admissions; construction; funding.

§ 41-19-301. Mississippi Adolescent Center for juveniles with mental retardation in Brookhaven; admissions; construction; funding.

(1) The Mississippi Adolescent Center located in Brookhaven, Mississippi, is recognized as now existing and shall be for the care and treatment of persons with mental retardation. The facility shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The facility shall be under the direction and control of the State Board of Mental Health.

(2) Admissions shall be limited to mentally retarded adolescents who have been committed to the center by a youth court judge or chancellor in accordance with Section 41-21-109, or who are voluntarily admitted to the center.

(3) The Mississippi Adolescent Center is authorized to establish and operate a school to meet the educational needs of its clients.

(4) With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of the Mississippi Adolescent Center. The general design of the facility and all construction plans shall be approved and recommended by the State Department of Mental Health.

(5) The Mississippi Adolescent Center shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the facility shall be promulgated by the board.

(6) Persons admitted to the Mississippi Adolescent Center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

(7) Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged mentally retarded, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the facility, or (c) unlawfully brings any firearm, deadly weapon or

explosive into the facility or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), or more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

(8) The Mississippi Adolescent Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to mental retardation.

SOURCES: Laws, 2002, ch. 528, § 1; Laws, 2009, ch. 563, § 13, eff from and after passage (approved May 13, 2009.)

Amendment Notes — The 2009 amendment substituted “Mississippi Adolescent Center” for “Juvenile Rehabilitation Center” throughout the section.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

CHAPTER 21

Individuals with Mental Illness or Mental Retardation

| | |
|--|-----------|
| In General | 41-21-1 |
| Persons in Need of Mental Treatment | 41-21-61 |
| Crisis Intervention Mental Health Fund | 41-21-151 |
| Screening, Testing, and Investigation by State Board of Health | 41-21-201 |

IN GENERAL

SEC.

41-21-1 through 41-21-29. Repealed.

41-21-31 and 41-21-33. Repealed.

41-21-35. Legal settlement of persons with mental illness and mental retardation.

41-21-37 through 41-21-41. Repealed.

41-21-43 and 41-21-45. Repealed.

§§ 41-21-1 through 41-21-29. Repealed.

Repealed by Laws, 1975, ch. 492, § 10, eff from and after July 1, 1975.

§ 41-21-1. [Laws, 1948, ch. 394, §§ 1, 8; Laws, 1950, ch. 342, §§ 1, 2, 9]

§ 41-21-3. [Laws, 1948, ch. 394, §§ 1, 8; Laws, 1950, ch. 342, §§ 1, 2, 9]

§ 41-21-5. [Laws, 1948, ch. 394, § 2; Laws, 1950, ch. 342, § 3; Laws, 1971, ch. 430, § 1]

§ 41-21-7. [Laws, 1948, ch. 394, § 3; Laws, 1950, ch. 342, § 4; Laws, 1964, ch. 428]

§ 41-21-9. [Laws, 1948, ch. 394, § 4; Laws, 1950, ch. 342, § 5; Laws, 1974, ch. 391]

§ 41-21-11. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-13. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-15. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-17. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-19. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-21. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-23. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-25. [Laws, 1948, ch. 394, §§ 5-12; Laws, 1950, ch. 342, §§ 6-13]

§ 41-21-27. [Laws, 1950, ch. 342, § 14]

§ 41-21-29. [Laws, 1950, ch. 464]

Editor's Note — Former § 41-21-1 dealt in general terms with procedures for the commitment of persons to mental institutions and for the adjudication of mental illness or disability. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-3 required the appointment of guardians of the persons or estates, or either, of persons adjudged to be of unsound mind and incapable of taking care of their persons or property. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-5 provided for the commencement of commitment proceedings by an affidavit in chancery court, for costs, and for notification of the nearest of kin or

guardian, if known, of the person alleged to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-7 provided for the person alleged by affidavit as being of unsound mind to be taken into custody by the sheriff for the purpose of being examined by two qualified physicians, and provided for their appointment. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-9 related to the mental and physical examination by two qualified physicians of the person alleged to be of unsound mind, the place of such examination, witnesses and testimony, and the report and certificate of the examining physicians. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-11 dealt with the certificate of findings of the two physicians examining a person alleged to be of unsound mind, the form and details of filing such certificate, and granted the examining physicians immunity from civil or criminal liability for their services. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-13 dealt with the procedure following examination and the filing of the certificate, the discharge of the subject if he is found not to be of unsound mind, the appointment of a guardian if he is found to be of unsound mind but does not require confinement, and his commitment and delivery to a mental institution if he does require confinement. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-15 provided for a hearing before the chancellor on the issue of the mental condition of the person adjudged to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-17 fixed liability for the payment of expenses of the hearing provided for by former § 41-21-15 and of conveying the subject to and from the site of the hearing. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-19 provided for the fees and expenses of the two examining physicians, the chancery clerk, and the sheriff. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-21 contained provisions for the handling of persons charged with criminal offenses and alleged or adjudicated to be of unsound mind. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-23 contained procedures for the examination and commitment of a person without the affidavit provided for in former § 41-21-5. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-25 fixed liability for the care and payment of expenses of maintenance of mental patients in state mental hospitals. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-27 provided for the adjudication of the restoration to reason of a person for whom a guardian had been appointed or who had been adjudged of unsound mind, under the provisions of former §§ 41-21-1 through 41-21-27, upon petition and hearing in chancery. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

Former § 41-21-29 authorized the transportation of mentally ill patients who are residents of other states to their states of residence and the payment of expenses therefor. For present provisions regarding commitment proceedings, see §§ 41-21-61 et seq.

§§ 41-21-31 and 41-21-33. Repealed.

Repealed by Laws, 1974, ch. 567, § 15, eff from and after passage (approved April 23, 1974).

§ 41-21-31. [Codes, 1892, § 2832; 1906, § 3216; Hemingway's 1917, § 5558; 1930, § 4573; 1942, § 6906]

§ 41-21-33. [Laws, 1946, ch. 485; Laws, 1948, ch. 400, §§ 1, 2]

Editor's Note — Former § 41-21-31 dealt with the liability for care and maintenance of mental patients not covered by former § 41-21-25.

Former § 41-21-33 related to the care of harmless mentally ill persons at institutions under the control of the former board of trustees of mental institutions.

The 1974 repealing act created a new state board and department of mental health to act in lieu of certain abolished agencies. See §§ 41-4-1 et seq. Section 16 of the repealing act provided, in part, that "all powers, duties and responsibilities transferred by this act shall remain under the authority and responsibility of existing state agencies until July 1, 1974."

§ 41-21-35. Legal settlement of persons with mental illness and mental retardation.

The rule as to the legal settlement of paupers shall apply in cases of persons with mental illness and persons with mental retardation.

SOURCES: Codes, 1880, § 667; 1892, § 2834; 1906, § 3218; Hemingway's 1917, § 5560; 1930, § 4575; 1942, § 6908; Laws, 2008, ch. 442, § 16, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted "persons with mental illness and persons with mental retardation" for "lunatics and insane persons."

Cross References — Settlement of paupers, see § 43-31-19.

§§ 41-21-37 through 41-21-41. Repealed.

Repealed by Laws, 1975, ch. 492, § 10, eff from and after July 1, 1975.

§ 41-21-37. [Codes, 1892, §§ 2841, 2842; 1906, §§ 3225, 3226; Hemingway's 1917, §§ 5567, 5568; 1930, §§ 4582, 4583; 1942, §§ 6915, 6916]

§ 41-21-39. [Codes, 1892, §§ 2841, 2842; 1906, §§ 3225, 3226; Hemingway's 1917, §§ 5567, 5568; 1930, §§ 4582, 4583; 1942, §§ 6915, 6916]

§ 41-21-41. [Codes, 1871, §§ 2091, 2095; 1880, § 664; 1892, § 2845; 1906, § 3230; Hemingway's 1917, § 5572; 1930, § 4586; 1942, § 6919]

Editor's Note — Former § 41-21-37 dealt with the issuance and execution of warrants for the arrest and return to custody of escaped mental patients.

Former § 41-21-39 related to the discharge and certification of sanity of mental patients found not to be insane.

Former § 41-21-41 related to the removal from state mental hospitals of patients found to be harmless incurables and of patients restored to reason.

The 1975 act which repealed the above sections contained new provisions dealing with persons in need of mental treatment. See §§ 41-21-61 et seq.

§§ 41-21-43 and 41-21-45. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-21-43. [Codes, Hemingway's 1921 Supp. § 5728b1; 1930, § 7291; 1942, § 6781; Laws, 1920, ch. 210.]

§ 41-21-45. [Codes, Hemingway's 1921 Supp. § 5728c1; 1930, § 7292; 1942, § 6782; Laws, 1920, ch 210.]

Editor's Note — Former § 41-21-43 required counties to temporarily provide for the maintenance of indigent mentally retarded persons.

Former § 41-21-45 prohibited cohabitation with mentally retarded persons.

PERSONS IN NEED OF MENTAL TREATMENT

SEC.

- 41-21-61. Definitions.
- 41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.
- 41-21-65. Affidavit for commitment.
- 41-21-67. Person to be taken into custody; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status.
- 41-21-69. Examination by physicians or physician and psychologist, nurse practitioner or physician assistant; presence of attorney.
- 41-21-71. Procedure after examination; release or confinement pending hearing.
- 41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.
- 41-21-74. Requirements for outpatient commitments.
- 41-21-75. Repealed.
- 41-21-76. Waiver of rights by respondent.
- 41-21-77. Commitment to state hospital or Veterans Administration facility.
- 41-21-79. Payment of costs.
- 41-21-81. Twenty days' observation, diagnosis and treatment; notice of need for further treatment; right to hearing on need for further treatment.
- 41-21-82. Report prior to termination of initial commitment or discharge.
- 41-21-83. Hearing on need for further treatment.
- 41-21-85. Payment of costs of hearing on need for further treatment.
- 41-21-87. Discharge at behest of director of treatment facility.
- 41-21-89. Discharge at behest of patient, attorney, relative or guardian.
- 41-21-91. Deportation of nonresidents.
- 41-21-93. Warrant for patient absent without authorization.
- 41-21-95. Payment of costs incurred in transporting discharged patients home or returning patients on unauthorized leave.
- 41-21-97. Confidentiality of hospital records and information; exceptions.
- 41-21-99. Continued care of patients.
- 41-21-101. Admissions and commitments not adjudication of incompetency.
- 41-21-102. Patients' rights.
- 41-21-103. Voluntary admissions for treatment.
- 41-21-105. Civil and criminal immunity.
- 41-21-107. Criminal offenses.
- 41-21-109. Rehabilitation facilities for adolescents with mental illness or mental retardation; establishment.

§ 41-21-61. Definitions.

As used in Sections 41-21-61 through 41-21-107, unless the context otherwise requires, the following terms defined have the meanings ascribed to them:

(a) "Chancellor" means a chancellor or a special master in chancery.

(b) "Clerk" means the clerk of the chancery court.

(c) "Director" means the chief administrative officer of a treatment facility or other employee designated by him as his deputy.

(d) "Interested person" means an adult, including but not limited to, a public official, and the legal guardian, spouse, parent, legal counsel, adult, child next of kin, or other person designated by a proposed patient.

(e) "Mentally ill person" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Mentally ill person" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Mentally ill person" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) mental retardation, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia.

(f) "Mentally retarded person" means any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of mental retardation and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself.

(g) "Physician" means any person licensed by the State of Mississippi to practice medicine in any of its branches.

(h) "Psychologist" when used in Sections 41-21-61 through 41-21-107, means a licensed psychologist who has been certified by the State Board of Psychological Examiners as qualified to perform examinations for the purpose of civil commitment.

(i) "Treatment facility" means a hospital, community mental health center, or other institution qualified to provide care and treatment for mentally ill, mentally retarded, or chemically dependent persons.

SOURCES: Laws, 1975, ch. 492, § 1; Laws, 1976, ch. 401, § 2; Laws, 1984, ch. 477, § 1; Laws, 1985, ch. 454, § 1; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 1, eff from and after July 2, 1994.

Cross References — Representation of persons in need of mental treatment by public defender, see § 25-32-9.

Prohibition against full-time staff member of resident treatment facility operated by department of mental health conducting initial involuntary commitment examination, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Requirements for outpatient commitments, see § 41-21-74.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Civil commitment proceedings required in order for youth court to commit minor to State institution designed for special care, see § 43-21-611.

Appointment of guardians for persons in need of mental treatment, see § 93-13-111.

Statutory provisions for commitment of persons in need of mental treatment not impairing validity of prior guardianships for persons of unsound mind, see § 93-13-128.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

Insanity defense, see Miss. Uniform Rules of Circuit and County Court Practice, Rule 9.07.

JUDICIAL DECISIONS

1. In general.
2. Person with mental illness.

1. In general.

The term "public treatment facility" in § 41-21-63, which provides that no person shall be committed to a public treatment facility except under the provisions of the involuntary commitment statutes, encompasses private treatment facilities. *Lee v. Alexander*, 607 So. 2d 30 (Miss. 1992).

There are 2 exclusive methods available to courts for committing an individual indefinitely to a state hospital, due to mental disorders. The first method of commitment requires acquittal by a jury on the basis of insanity or feeble-mindedness; § 99-13-7 deals with acquittal of a crime by reason of insanity, and § 99-13-9 provides for acquittal for feeble-mindedness. The second method of indefinite commitment requires a hearing before a chancellor prior to the individual being ordered to the state hospital for treatment and is found in §§ 41-21-61 through 41-21-107. The legislature has not seen fit to bestow upon circuit judges the power to indefi-

nately commit an individual without the concurrence of a jury or without deferring to the chancellor through §§ 41-21-61 to 41-21-107 and, therefore, commitment of an individual to a state hospital requires more than a mere order by a circuit court judge. *Hendrix v. Gammage*, 556 So. 2d 354 (Miss. 1990).

A person may not be involuntarily committed to a state mental institution unless (1) there is clear and convincing evidence that the person is in substantial need of mental treatment, and (2) the state renders to him a minimally adequate course of care and treatment; accordingly, a deceased had a substantive right not to be "warehoused," and if he was substantially mentally ill, the state's right to commit him involuntarily was conditioned on its affording him minimally adequate care and treatment. *Chill v. Mississippi Hosp. Reimbursement Comm'n*, 429 So. 2d 574 (Miss. 1983).

2. Person with mental illness.

Detailed office notes presented at the involuntary commitment hearing by the

two doctors who examined the individual were sufficient to meet the evidentiary requirements under Miss. Code Ann. § 41-21-61(e). In re Bauman, 878 So. 2d 1033 (Miss. Ct. App. 2004).

In defendant's capital murder case, defendant produced enough evidence to be granted leave to proceed with a petition for post-conviction relief in the trial court on the issue of his mental retardation where he submitted expert testimony regarding his low IQ level. Goodin v. State, 856 So. 2d 267 (Miss. 2003), cert. denied,

541 U.S. 947, 124 S. Ct. 1681, 158 L. Ed. 2d 375 (2004).

Evidence that a person alleged to be mentally ill had molested a cousin as a child was properly excluded by the trial court as such evidence did not show a "recent attempt" to harm others and there was no evidence indicating that the person had in the past been charged or convicted of pedophilia. McCorkle v. McCorkle, 811 So. 2d 258 (Miss. Ct. App. 2001).

ATTORNEY GENERAL OPINIONS

Commitment proceeding is specialized litigation; \$75 is fee, if affiant is able to pay same. Jones Nov. 10, 1993, A.G. Op. #93-0514.

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon

treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mistaken statutory provision is denial of due process rights. Presley, March 3, 1994, A.G. Op. #93-0999.

RESEARCH REFERENCES

ALR. 29 A.L.R. Proof of Facts 2d 571, Phobic Neurosis (Phobic Reaction) Following Trauma.

§ 41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in said sections.

(2) The chancery court, or the chancellor in vacation shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved criminal charges pending.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

SOURCES: Laws, 1975, ch. 492, § 2; Laws, 1976, ch. 401, § 3; Laws, 1984, ch. 477, § 2; Laws, 1985, ch. 454, § 6; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 2;

Laws, 1996, ch. 430, § 2, eff from and after passage (approved March 25, 1996).

Cross References — Establishment of State Board of Mental Health and State Department of Mental Health, see §§ 41-4-1 et seq.

Retention of respondent as emergency patient prior to formal commitment, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Deportation of nonresidents, see § 41-21-91.

Effect of commitment upon patients' civil rights, see § 41-21-101.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Voluntary admission of mentally ill and retarded persons of particular age or marital status, see § 41-21-103.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Initiation of proceedings by the commissioner of corrections for the commitment of mentally ill or retarded offenders, see § 47-5-120.

Criminal offense for sending sane person to insane asylum, see § 97-3-13.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Construction and application, generally.
3. Jurisdiction.
4. Evidence.

1. In general.

Due process clause did not oblige state to make its civil commitment processes available to those who had been charged with or convicted of crimes, even if arrestee would have had due process right to notice and hearing before being transferred to mental health facility. *McKlemurry ex rel. Rayborn v. Hendrix*, 971 F. Supp. 1089 (S.D. Miss. 1997).

Arrestee had no due process protection against being arrested for probation violation of possessing beer, despite his claim that possession of beer was manifestation of depression that would have warranted civil commitment rather than arrest; although arresting officers were not trained mental health professionals, there was no demonstration that arrestee met criteria for insanity. *McKlemurry ex rel. Rayborn v. Hendrix*, 971 F. Supp. 1089 (S.D. Miss. 1997).

Arrestee, who had been arrested for probation violation of possessing beer, did not have equal protection right to civil commitment, rather than incarceration. *McKlemurry ex rel. Rayborn v. Hendrix*, 971 F. Supp. 1089 (S.D. Miss. 1997).

Statute precluding civil commitment to state psychiatric hospital of those charged with crimes did not proscribe provision of treatment, psychiatric or otherwise, for persons charged with crimes and, thus, statute did not violate equal protection; county could provide arrestee with treatment for his mental illness, but responsibility for providing treatment was county's duty, not State's duty. *McKlemurry ex rel. Rayborn v. Hendrix*, 971 F. Supp. 1089 (S.D. Miss. 1997).

This section [Code 1942, § 6917] does not absolve from liability those who by false and fraudulent certificates mislead the asylum authorities. *Bacon v. Bacon*, 76 Miss. 458, 24 So. 968 (1899).

The section [Code 1942, § 6909] does not conflict with any provision of the state constitution, nor with the 14th amendment to the Federal Constitution. *Fant v. Buchanan*, 17 So. 371 (Miss. 1895).

2. Construction and application, generally.

The term "public treatment facility" in § 41-21-63, which provides that no person shall be committed to a public treatment facility except under the provisions of the involuntary commitment statutes, encompasses private treatment facilities. *Lee v. Alexander*, 607 So. 2d 30 (Miss. 1992).

Where the alleged incompetent owner of realty and his guardian were both made parties to a proceeding to foreclose a trust deed given by the guardian, and the owner appeared in the proceeding to contest confirmation of the sale on the ground of invalidity of the adjudication of insanity and appointment of a guardian because the owner was not served with process, questions as to the regularity and efficacy of the foreclosure proceedings were res judicata in a subsequent proceeding to remove the cloud from the title (the sale having been confirmed), if the owner was sane, since he was not only properly summoned but appeared and resisted the entry of the final decree on the identical grounds urged in the proceeding to clear the title, and they were also res judicata, even if the owner was insane and the appointment of the guardian was invalid because no process had been served on the owner in the incompetency proceedings, since he was properly sued through the guardian, who was at least invested with the capacities of a guardian ad litem or next friend. *Dana v. Zerkowsky*, 192 Miss. 302, 5 So. 2d 423 (1942).

A superintendent of an insane hospital is entitled to the custody of an adjudged lunatic committed to it by order of the court. *Mabry v. Hoye*, 124 Miss. 144, 87 So. 4 (1921).

This section [Code 1942, § 6909] is authority for confining dangerous or indigent lunatics for the protection of themselves and the safety of the public and the clerk may exercise such authority in vacation and his act may be revised by the court and either set aside or approved. *Baum v. Greenwald*, 95 Miss. 765, 49 So. 836 (1909).

3. Jurisdiction.

If criminal defendant is not competent to assist in defense, court should enter order so finding and commit him to men-

tal institution or such other facility as court may deem appropriate under circumstances, to receive treatment for his condition, and order of commitment should require regular reports advising court: (1) whether there is substantial probability that defendant will become mentally competent to stand trial; (2) whether defendant is progressing toward competency; and, if neither of these conditions occurs within reasonable time, judge should order civil commitment proceedings be instituted. *Gammage v. State*, 510 So. 2d 802 (Miss. 1987).

Where indictment for murder was, on motion of state, passed to files, and defendant subsequently adjudged insane and committed to asylum by chancery court, circuit court was not deprived of jurisdiction to try defendant for murder. *Byrd v. State*, 179 Miss. 336, 175 So. 190 (1937).

Where prisoner was in custody of circuit court under indictment for felony, circuit court could pass upon question of his sanity, despite prior adjudication of insanity by chancery court. *Hoye v. State*, 169 Miss. 111, 152 So. 644 (1934).

But where a person is held in jail under indictment by an order of the circuit court he is in the exclusive jurisdiction of that court and the chancery court has no jurisdiction to inquire into his sanity. *Hawie v. Hawie*, 128 Miss. 473, 91 So. 131 (1922).

The chancery courts have jurisdiction of writs of lunacy and the commitment of an adjudged lunatic to an insane hospital and his confinement therein. *Mabry v. Hoye*, 124 Miss. 144, 87 So. 4 (1921).

4. Evidence.

In a habeas corpus proceeding by one charged with murder and confined to the Mississippi State Hospital after having been found incompetent to stand trial, the petitioner was not denied due process of law where the burden of proof was placed upon him to prove that he had recovered his sanity and was no longer likely to cause harm to himself or others and where the state presented expert testimony that the petitioner was a paranoid schizophrenic, then in tenuous remission, and that he would pose a danger to himself or others if released from the hospital. *Bethany v. Stubbs*, 393 So. 2d 1351 (Miss. 1981).

Under this section [Code 1942, § 6909] a jury may order a person confined where the evidence justifies, but is doubtful.

Baum v. Greenwald, 95 Miss. 765, 49 So. 836 (1909).

ATTORNEY GENERAL OPINIONS

Section 41-21-63(3) limits the circuit court's jurisdiction in commitment proceedings to persons indicted and charged with felonies; consequently, there is no prohibition against the chancery court asserting jurisdiction in civil commitment proceedings where there are unresolved misdemeanor charges pending against the mentally ill person. McKenzie, October 24, 1995, A.G. Op. #95-0217.

Under Section 43-21-611, the youth court would have original jurisdiction over

commitment of a mentally ill juvenile only where that juvenile is already in youth court jurisdiction as abused, neglected, delinquent, in need of supervision or dependent. Jurisdiction over commitment proceedings for adults and for all other juveniles would be in chancery court pursuant to Section 41-21-63. Floyd, March 29, 1996, A.G. Op. #96-0148.

RESEARCH REFERENCES

ALR. Alleged incompetent as witness in lunacy inquisition. 22 A.L.R.2d 756.

Constitutional right to jury trial in proceeding for adjudication of incompetency or insanity or for restoration. 33 A.L.R.2d 1145.

Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged. 92 A.L.R.2d 570.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

28 Am. Jur. Proof of Facts 548, Confinement to Mental Institution, Proof No. 17 (proof of confinement to mental institution).

4 Am. Jur. Trials, Incompetency and Commitment Proceedings, §§ 1 et seq.

26 Am. Jur. Trials 97, Representing the Mentally Ill: Civil Commitment Proceedings.

§ 41-21-65. Affidavit for commitment.

If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides, posting with the clerk a reasonable sum not to exceed Four Hundred Dollars (\$400.00) for court costs in the premises if financially able. The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence. The affidavit shall be filed in duplicate. The affidavit shall set forth the name and address of the proposed patient's nearest relatives, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred. Each factual allegation

must be supported by observations of witnesses named in the affidavit. Affidavits shall be stated in behavioral terms and shall not contain judgmental or conclusory statements.

SOURCES: Laws, 1975, ch. 492, § 3(1); Laws, 1984, ch. 477, § 3; Laws, 2004, ch. 565, § 1; Laws, 2009, ch. 525, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted “not to exceed Four Hundred Dollars (\$400.00)” in the first sentence; and made a minor stylistic change.

Cross References — Definition of an “interested person” for purposes of commitment of persons in need of mental health treatment, see § 41-21-61.

Provisions relative to taking person into custody, appointment of examining physicians, appointment of attorney, and emergency patient status, see § 41-21-67.

Report of and certificate of physician’s or psychologist’s initial examination in involuntary commitment proceedings, see § 41-21-69.

Prohibition against involuntary commitment of persons whose primary problems are physical disabilities associated with old age or infant birth defects, see § 41-21-73.

Effect of commitment upon patients’ civil rights, see § 41-21-101.

Patients’ rights when confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient’s right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Voluntary admissions for treatment, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Construction with other law.

1. In general.

In civil commitment proceedings involving persons charged with crimes who have been determined to lack the mental capacity to stand trial, an order of the circuit court reciting that the accused has been indicted for a criminal offense and that the court is of the opinion that he is suffering from such mental disease or disorder as to cause him to be incompetent to stand trial and that he should be referred to the chancery court to undergo civil commitment procedures shall be in lieu of the affidavit for commitment provided for in this section. *Brown v. Jaquith*, 318 So. 2d 856 (Miss. 1975).

One held under a valid commitment under this section [Code 1942, § 6909-03] is not entitled to release on habeas corpus because of alleged illegality of a recommitment following an escape. *Brown v. United States*, 321 F.2d 898 (5th Cir. 1963).

The provision of this section [Code 1942, § 6909-03] that the affidavit of “any citi-

zen” may be received in commitment proceedings operates to qualify that of Code 1942, § 1689 making a spouse an incompetent witness. *Brown v. United States*, 321 F.2d 898 (5th Cir. 1963).

A former wife is not a relative within the contemplation of the statute. *Wactor v. Wactor*, 245 Miss. 132, 146 So. 2d 540 (1962).

2. Construction with other law.

Summary judgment was properly granted on a patient’s negligence per se claim against her two stepsons because, while the patient argued that a pauper’s affidavit had to be filed by a guardian, which neither stepson was, she cited no statutes or case law forbidding non-guardians to file pauper’s affidavits; Miss. Code Ann. § 41-21-65 permitted any relative or any interested person to and file an affidavit regarding a person alleged to be in need of treatment. Miss. Code Ann. § 41-21-67(1), which governed proceedings after an affidavit was filed, instructed trial judges, and whatever implication arose from it regarding private conduct was insubstantial; thus, there is no basis on

which to find that either statute created a duty upon which to base a negligence per se claim. *Tebo v. Tebo*, 550 F.3d 492 (5th Cir. 2008).

Summary judgment was properly granted on a patient's malicious prosecution claim against her two stepsons because there no dispute of material fact on the issue of probable cause. There was no evidence that either of the stepsons believed that the behavior they described in

their affidavits in order to initiate involuntary commitment proceedings against the patient under Miss. Code Ann. § 41-21-65 did not constitute probable cause; moreover, the patient's admittedly erratic behavior eliminated a genuine issue of material fact as to whether there were no reasonable grounds for the statements in the affidavits and the belief that she was in need of treatment. *Tebo v. Tebo*, 550 F.3d 492 (5th Cir. 2008).

ATTORNEY GENERAL OPINIONS

Chancellor, rather than Clerk, must make decision on whether or not to have person in need of treatment taken into custody under statute; clerk may not refuse to accept affidavit filed by any person under this section. Crumpton, July 2, 1992, A.G. Op. #92-0484.

This section permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or

chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. Morrow, Nov. 5, 2004, A.G. Op. 04-0540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory responsibility of the individual or county of residence. Blakley, Aug. 25, 2006, A.G. Op. 06-0383.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 21 (affidavit — of mental disability — to accompany petition, for hearing to determine competency of alleged incompetent).

28 Am. Jur. Proof of Facts, Confinement to Mental Institution, Proof No. 18 (proof of malice in attempt to have person committed).

§ 41-21-67. Person to be taken into custody; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status.

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into his or her custody the person alleged to be in need of treatment and to bring the person

before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31 and for examination as set forth in Section 41-21-69. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. Provided, however, that any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any available regional mental health facility or any other available suitable location as the court may so designate pending an admission hearing and may, if necessary, order a peace officer or other person to transport the respondent to that mental health facility or suitable location. Any respondent so retained may be given such treatment by a licensed physician as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

(5) Whenever a licensed physician or psychologist certified to complete examinations for the purpose of commitment has reason to believe that a

person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician or psychologist may hold the person or the physician may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours or the end of the next business day of the chancery clerk's office. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist who holds the person shall certify in writing the reasons for the need for holding. Any respondent so held may be given such treatment by a licensed physician as indicated by standard medical practice. Persons acting in good faith in connection with the detention of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

SOURCES: Laws, 1975, ch. 492, § 3(2, 3); Laws, 1984, ch. 477, § 4; Laws, 1985, ch. 454, § 2; Laws, 1994, ch. 533, § 3; Laws, 1994, ch. 599, § 3; Laws, 2000, ch. 493, § 1; Laws, 2008, ch. 513, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote (2); and made minor stylistic changes throughout.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Right of a person to have an attorney present during a physical examination, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Construction with other law.

1. In general.

Authorization of temporary detention of individual in jail upon finding of probable cause to believe person is mentally ill, as provided for in § 41-21-67, does not unconstitutionally violate restrained individual's due process rights because state has compelling interest in seeking detention. *Boston v. Lafayette County*, 743 F. Supp. 462 (N.D. Miss. 1990).

In a proceeding to obtain examination of one alleged to be suffering from a mental disorder, this section [Code 1942, § 6909-04] and Code 1942, §§ 6909-05 to 6909-08 cited, incidentally. *Wactor v. Wactor*, 245 Miss. 132, 146 So. 2d 540 (1962).

2. Construction with other law.

Summary judgment was properly granted on a patient's negligence per se claim against her two stepsons because, while the patient argued that a pauper's affidavit had to be filed by a guardian, which neither stepson was, she cited no statutes or case law forbidding non-guardians to file pauper's affidavits; Miss. Code Ann. § 41-21-65 permitted any relative or any interested person to and file an affidavit regarding a person alleged to be in need of treatment. Miss. Code Ann. § 41-21-67(1), which governed proceedings after an affidavit was filed, instructed trial judges, and whatever implication arose from it regarding private conduct was insubstantial; thus, there is no basis on which to find that either statute created a duty upon which to base a negligence per

se claim. *Tebo v. Tebo*, 550 F.3d 492 (5th Cir. 2008).

ATTORNEY GENERAL OPINIONS

If Chancellor determines that there is probable cause to believe that particular person is mentally ill and there is no reasonable alternative to detention, then Chancellor may order that this person be retained "as emergency patient at any available regional mental health facility or any other available suitable location as court may so designate"; such person shall not be held in hospital operated directly by Department of Mental Health and "shall not be held in jail unless court finds that there is no reasonable alternative." *Crumpton*, July 2, 1992, A.G. Op. #92-0484.

Under Section 41-21-67(4), a mentally ill person awaiting a competency hearing or awaiting admission to a mental institution should not be held in a jail unless the court determines that there is no reasonable alternative. *Glennis*, July 7, 1995, A.G. Op. #95-0463.

An osteopath qualifies as a "licensed physician" for the purposes of this section and § 41-21-69. *Chamberlin*, Feb. 17, 2004, A.G. Op. 04-0044.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery

court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to this section the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk or chancellor of the person's county of residence. Alternatively, this section also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in § 41-21-79. *Morrow*, Nov. 5, 2004, A.G. Op. 04-0540.

A regional mental health facility may hold individuals for either 72 hours or until the end of the next business day of the chancery clerk's office, in the discretion of the treating physician or psychologist, without exposure to wrongful detention or the like if the longer interpretation is used. *Terney*, July 29, 2005, A.G. Op. 05-0362.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, *Mentally Impaired Persons* §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), *Incompetent Persons*, Forms 81 et seq. (appointment of examiners and summoning of jurors).

14 Am. Jur. Pl & Pr Forms (Rev), *Incompetent Persons*, Forms 43-47 (warrant or writ — for apprehension or detention).

§ 41-21-69. Examination by physicians or physician and psychologist, nurse practitioner or physician assistant; presence of attorney.

(1)(a) The physicians or physician and psychologist, nurse practitioner or physician assistant so appointed shall immediately make a full inquiry into the condition of the person alleged to be in need of treatment and shall make a mental examination and physical evaluation of the person, and shall make a report and certificate of their findings of all mental and acute physical

problems to the clerk of the court. The report and certificate shall set forth the facts as found by the physicians or physician and psychologist, nurse practitioner or physician assistant and shall state whether or not the examiner is of the opinion that the proposed patient is suffering a disability defined in Sections 41-21-61 through 41-21-107 and should be committed to a treatment facility. The statement shall include the reasons for that opinion. The examination may be based upon a history provided by the patient and the report and certificate of findings shall include an identification of all mental and physical problems identified by the examination.

(b) If the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed finds: (i) the respondent is mentally ill; (ii) the respondent is capable of surviving safely in the community with available supervision from family, friends or others; (iii) based on the respondent's treatment history and other applicable medical or psychiatric indicia, the respondent is in need of treatment in order to prevent further disability or deterioration that would result in significant deterioration in the ability to carry out activities of daily living; and (iv) his or her current mental status or the nature of his or her illness limits or negates his or her ability to make an informed decision to seek voluntarily or comply with recommended treatment; the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed shall so show on the examination report and certification and shall recommend outpatient commitment. The examining physicians or the physician and psychologist, nurse practitioner or physician assistant shall also show the name, address and telephone number at the proposed outpatient treatment physician or facility.

(2) The examinations shall be conducted and concluded within forty-eight (48) hours after the order for examination and appointment of attorney, and the certificates of the physicians or the physician and psychologist, nurse practitioner or physician assistant shall be filed with the clerk of the court within that time, unless the running of that period extends into nonbusiness hours, in which event the certificate shall be filed at the beginning of the next business day. However, if the examining physicians or the physician and psychologist, nurse practitioner or physician assistant is of the opinion that additional time to complete the examination is necessary, and this fact is communicated to the chancery clerk or chancellor, the clerk or chancellor shall have authority to extend the time for completion of the examination and the filing of the certificate, the extension to be not more than eight (8) hours.

(3) At the beginning of the examination, the respondent shall be told in plain language of the purpose of the examination, the possible consequences of the examination, of his or her right to refuse to answer any questions, and his or her right to have his or her attorney present.

SOURCES: Laws, 1975, ch. 492, § 3(4, 5); Laws, 1984, ch. 477, § 5; Laws, 1985, ch. 454, § 3; Laws, 1994, ch. 533, § 4; Laws, 1994, ch. 599, § 4; Laws, 2008, ch. 513, § 2, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote the section to provide that the examination by physicians or physician and psychologist, nurse practitioner or physician assistant must be concluded within 48 hours after the court order for examination.

Cross References — Provisions relative to taking person into custody, appointment of examining physicians, appointment of attorney, and emergency patient status, see § 41-21-67.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. Rule Civil Proc. 81.

JUDICIAL DECISIONS

1. In general.

State statutory scheme permitting temporary detention of mentally ill person in jail followed by physical and psychological examination within 24 hours of issuance of writ to take custody, and placing duty on sheriff to keep safe prisoners entrusted to his care, adequately meet procedural

due process requirements for purposes of summary judgment motion in federal civil rights action by executor of estate of mentally ill person who died while in jail awaiting examination. *Boston v. Lafayette County*, 743 F. Supp. 462 (N.D. Miss. 1990).

ATTORNEY GENERAL OPINIONS

An osteopath qualifies as a "licensed physician" for the purposes of § 41-21-67

and this section. *Chamberlin*, Feb. 17, 2004, A.G. Op. 04-0044.

RESEARCH REFERENCES

Am Jur. 14 *Am. Jur. Pl & Pr Forms* (Rev), *Incompetent Persons*, Forms 111-

114, 124, 126, 131 (oaths, certificates, special issues — for jury — sanity hearing).

§ 41-21-71. Procedure after examination; release or confinement pending hearing.

If, as a result of the examination, the examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit. If the chancellor or chancery clerk finds, based upon the physicians' or the physician's and psychologist's, nurse practitioner's or physician assistant's certificate and any other relevant evidence, that the respondent is in need of treatment and that certificate is filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificate.

SOURCES: Laws, 1975, ch. 492, § 3(6, 7); Laws, 1976, ch. 401, § 4; Laws, 1984, ch. 477, § 6; Laws, 2008, ch. 513, § 3, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote the second sentence; and made minor stylistic changes.

Cross References — Guardianship for mentally ill veterans, see §§ 35-5-1 et seq. Emergency treatment formerly provided for in this section, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Length of initial involuntary commitment of mentally ill or retarded persons, see § 41-21-73.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Guardianship of insane persons generally, see §§ 93-13-121 et seq.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 41-47 (warrant or writ — for apprehension or detention).

§ 41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.

(1) The hearing shall be conducted before the chancellor. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney, which shall include: (a) notice of the date, time and place of the hearing; (b) a clear statement of the purpose of the hearing; (c) the possible consequences or outcome of the hearing; (d) the facts that have been alleged in support of the need for commitment; (e) the names, addresses and telephone numbers of the examiner(s); and (f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment that the respondent has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a mentally ill or mentally retarded person and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable

alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that can meet the patient's treatment needs. Treatment prior to admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where such person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative or the provision of home health services.

For persons committed as mentally ill or mentally retarded, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law that constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

(8) Notwithstanding any other provision of law to the contrary, neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, unless related to the respondent by blood or marriage, shall be assigned or adjudicated custody, guardianship, or conservatorship of the respondent.

(9) The county where a person in need of treatment is found is authorized to charge the county of such person's residence for the costs incurred while such person is confined in the county where such person was found.

SOURCES: Laws, 1975, ch. 492, § 4(1); Laws, 1976, ch. 401, § 5; Laws, 1984, ch. 477, § 7; Laws, 1985, ch. 454, § 7; Laws, 1990, ch. 365, § 1; Laws, 1994, ch. 533, § 5; Laws, 1994, ch. 599, § 5; Laws, 2001, ch. 331, § 1; Laws, 2004, ch. 565, § 2, eff from and after July 1, 2004.

Cross References — Appointment of an attorney, provision for which formerly appeared in this section, see § 41-21-67.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

In a habeas corpus proceeding by one charged with murder and confined to the Mississippi State Hospital after having been found incompetent to stand trial, the petitioner was not denied due process of law where the burden of proof was placed upon him to prove that he had recovered his sanity and was no longer likely to

cause harm to himself or others and where the state presented expert testimony that the petitioner was a paranoid schizophrenic, then in tenuous remission, and that he would pose a danger to himself or others if released from the hospital. *Bethany v. Stubbs*, 393 So. 2d 1351 (Miss. 1981).

ATTORNEY GENERAL OPINIONS

From and after July 1, 2004 the county of residence of the person committed is responsible for treatment costs incurred prior to admission to a state-operated facility. Speed, Dec. 10, 2004, A.G. Op. 04-0591.

Chancellors do not have the authority to order a county hospital to provide beds to

temporarily hold mentally ill patients while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county hospital provide this service free of charge to the county or the patient. Wilson, Aug. 26, 2005, A.G. Op. 05-0332.

RESEARCH REFERENCES

ALR. Modern status of rules as to standard of proof required in civil commitment proceedings. 97 A.L.R.3d 780.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Adequacy of defense counsel's representation of criminal client regarding incompetency, insanity, and related issues. 17 A.L.R.4th 575.

Adequacy of defense counsel's represen-

tation of criminal client — issues of incompetency. 70 A.L.R.5th 1.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of insanity. 72 A.L.R.5th 109.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 61 et seq. (notice of hearing).

§ 41-21-74. Requirements for outpatient commitments.

(1) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent treatment consistent with accepted medical standards.

(2) If the respondent fails or clearly refuses to comply with outpatient treatment, the director of the treatment facility, his designee or an interested person shall make all reasonable efforts to solicit the respondent's compliance.

These efforts shall be documented and, if the respondent fails or clearly refuses to comply with outpatient treatment after such efforts are made, such efforts shall be documented with the court by affidavit. Upon the filing of the affidavit, the sheriff of the proper county is authorized to take the respondent into his custody.

(3) The respondent may be returned to the treatment facility as soon thereafter as facilities are available. The respondent may request a hearing within ten (10) days of his return to the treatment facility. Such hearing shall be held pursuant to the requirements set forth in Section 41-21-81.

(4) The chancery court of the county where the public facility is located or the committing court shall have jurisdiction over matters concerning outpatient commitments when such an order is sought subsequent to an inpatient course of treatment pursuant to Sections 41-21-61 through 41-21-107, 43-21-611, 99-13-7 and 99-13-9. An outpatient shall not have or be charged for a recommitment process within a period of twelve (12) months of the initial outpatient order.

SOURCES: Laws, 1994, ch. 533, § 6; Laws, 1994, ch. 599, § 6, eff from and after July 1, 1994.

Editor's Note — Laws of 1994, chs. 533, § 6, and 599, § 6, both added this section, but chapter 599 contained an additional last sentence, which is included above.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

§ 41-21-75. Repealed.

Repealed by Laws, 1984, ch. 477, § 28, eff from and after July 1, 1984.
[Laws, 1975, ch. 492, § 4(2-6)]

Editor's Note — Former § 41-21-75 provided for hearings before chancellor with respect to the discharge or admission to state hospital. Provisions similar to the ones contained in former section 41-21-75 now appear in section 41-21-73.

§ 41-21-76. Waiver of rights by respondent.

The respondent in any involuntary commitment proceeding held pursuant to the provisions of sections 41-21-61 through 41-21-107 may make a knowing and intelligent waiver of his rights in such proceeding, provided that the waiver is made by his attorney with the informed consent of the respondent and with the approval of the court. The reasons for the waiver shall be made a part of the record.

SOURCES: Laws, 1976, ch. 401, § 1; Laws, 1984, ch. 477, § 8, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

§ 41-21-77. Commitment to state hospital or Veterans Administration facility.

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health pursuant to the provisions of Section 41-4-7(gg). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for the mentally ill. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/mental retardation centers in providing care to local patients. The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the physicians' or the physician's and psychologist's, nurse practitioner's or physician assistant's certificate, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

SOURCES: Laws, 1975, ch. 492, § 4(7); Laws, 1984, ch. 477, § 9; Laws, 1994, ch. 533, § 7; Laws, 1994, ch. 599, § 7; Laws, 2001, ch. 331, § 2; Laws, 2004, ch. 547, § 1; Laws, 2008, ch. 513, § 4; Laws, 2009, ch. 543, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2008 amendment rewrote and divided the former sixth sentence into the present sixth and seventh sentences; and made minor stylistic changes.

The 2009 amendment added the fourth sentence.

Cross References — Care of veterans in state mental institutions, see § 41-17-11.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

This section does not violate Article 4, § 86 of the Mississippi Constitution by conditioning the admission of a patient for court-ordered mental treatment on the determination by the admitting institution's director that facilities and services are available; however, this section requires the director of the admitting facility to assume the responsibility of providing treatment, care, and housing for mentally ill minors even if they are not immediately admitted to the facility as soon as they are committed by the lower court. *Attorney Gen. v. B.C.M.*, 744 So. 2d 299 (Miss. 1999).

It was error for court to declare unconstitutional statute which provides that no person shall be admitted to the State Hospital where the issue before it,

whether director of State Hospital should be held in contempt for not admitting person pursuant to commitment order, could have been resolved without reaching the constitutional issue as the director testified that the State Hospital was prepared to take the patient at that time. *State v. Watkins*, 676 So. 2d 247 (Miss. 1996).

Notice of show cause hearing at which court intended to inquire as to why patient had not been admitted to State Hospital was not adequate notice to attorney general that court intended to consider constitutionality of statute which provides that no person shall be admitted to the State Hospital until the director determines if facilities and services are available. *State v. Watkins*, 676 So. 2d 247 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

Once a court has ordered an individual placed in the custody of a state treatment facility, that person becomes the state's "burden," which includes the cost of his housing, care, and treatment. *Chamberlin*, Jan. 23, 2002, A.G. Op. #01-0722.

The burden and responsibility of determining the best interests and treatment of a minor is placed on the entity to which the minor is committed. Providing appropriate care and treatment for a minor who is committed by a court to a treatment facility is the responsibility of the director

of that facility. *Tillman*, Nov. 7, 2003, A.G. Op. 03-0542.

This section requires the director of the admitting facility to assume the responsibility of providing treatment and care for all mentally ill patients, whether minors or adults, who are not immediately admitted to the facility as soon as they are committed. *Creekmore*, Apr. 16, 2004, A.G. Op. 03-0614.

Chancellors do not have the authority to order a county hospital to provide beds to temporarily hold mentally ill patients

while they are awaiting transfer to the Mississippi State Hospital, nor do they have the authority to order that a county

hospital provide this service free of charge to the county or the patient. Wilson, Aug. 26, 2005, A.G. Op. 05-0332.

RESEARCH REFERENCES

ALR. Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement. 43 A.L.R.5th 777.

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 4 et seq.

§ 41-21-79. Payment of costs.

The costs incidental to the court proceedings, including but not limited to court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's or psychologist's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. If the respondent is found by the court to not be in need of mental treatment, then all those costs shall be taxed to the affiant initiating the hearing.

SOURCES: Laws, 1975, ch. 492, § 4(8); Laws, 1994, ch. 533, § 8; Laws, 1994, ch. 599, § 8; Laws, 2008, ch. 513, § 5, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted “physician’s or psychologist’s fees” for “physician’s and psychologist’s fees”; inserted “or her”; and made minor stylistic changes.

Cross References — Report of and certificate of physician’s or psychologist’s initial examination in involuntary commitment proceedings, see § 41-21-69.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

The statute places the responsibility for the expenses of medication administered to a person housed in a county detention center to await admission to a mental institution upon the county in which the detained person usually resides. Entrekin, September 4, 1998, A.G. Op. #98-0561.

Medication expenses for a person housed in a county detention center to await admission to a mental institution may be submitted to the Chancery Court to be assessed as costs in the sanity proceedings of a non-indigent person under the statute. Entrekin, September 4, 1998, A.G. Op. #98-0561.

The \$75 fee received by chancery clerks in lunacy cases covers all of the normal

services that a court clerk would perform with regard to any petition or complaint before the court, but would not include administrative services which seem to be more like services that would be performed by a social worker, such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for prescreening and follow-ups, etc.; if the chancery court clerk performs such additional administrative services, the court may allow a reasonable fee over and above the clerk’s statutory filing fee. Britt, November 25, 1998, A.G. Op. #98-0689.

Pursuant to this section, the cost of transportation of a mental patient should

paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in § 41-21-83 should be the responsibility of the State Board of Mental Health. Smith, Mar. 18, 2003, A.G. Op. #02-0219.

Section 41-21-65 permits family members of a person in need of treatment to file the required affidavit in the chancery court of the county of residence of that person. If the person in need of treatment is in the custody of the sheriff in another county, pursuant to § 41-21-67 the chancery court judge of the county of residence of such person has the authority to have the clerk issue a writ to the sheriff of the county where such person is in custody to have the person transported to the clerk

or chancellor of the person's county of residence. Alternatively, § 41-21-67 also authorizes the writ to be directed to the sheriff of the county of residence of the person in need of treatment. If the writ is directed to the sheriff of a foreign county, then the sheriff may recover the costs of transportation from the county of residence of the person in need of treatment as provided in this section. Morrow, Nov. 5, 2004, A.G. Op. 04-0540.

No authority can be found for a municipality to voluntarily pay the costs to initiate civil commitment proceedings on behalf of a prisoner which are the statutory responsibility of the individual or county of residence. Blakley, Aug. 25, 2006, A.G. Op. 06-0383.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.

§ 41-21-81. Twenty days' observation, diagnosis and treatment; notice of need for further treatment; right to hearing on need for further treatment.

If at any time within twenty (20) days after admission of a patient to a treatment facility the director determines that the patient is in need of continued hospitalization, he shall give written notice of his findings, together with his reasons for such findings, to the respondent, the patient's attorney, the clerk of the admitting court and the two (2) nearest relatives or guardian of the patient, if the addresses of such relatives or guardian are known. The patient, or any aggrieved relative or friend or guardian shall have sixty (60) days from the date of such notice to request a hearing on the question of the patient's commitment for further treatment. The patient, or any aggrieved relative or guardian or friend, may request a hearing by filing a written notice of request within such sixty (60) days with the clerk of the county within which the facility is located; provided, however, that the patient may request such a hearing in writing to any member of the professional staff, which shall be forwarded to the director and promptly filed with the clerk of the county within which the facility is located and provided further that if the patient is confined at the Mississippi State Hospital, Whitfield, Mississippi, said notice of request shall be filed with the Chancery Clerk of the First Judicial District of Hinds County, Mississippi. A copy of the notice of request must be filed by the patient or on his behalf with the director and the chancery clerk of the admitting court. The notice of the need for continued hospitalization shall be explained to the patient by a member of the professional staff and the explanation documented in the clinical record. At the same time the patient shall be advised of his right

to request a hearing and of his right to consult a lawyer prior to deciding whether to request the hearing, and the fact that the patient has been so advised shall be documented in the clinical record. Hearings held pursuant to this section shall be held in the chancery court of the county where the facility is located; provided, however, that if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Law, 1975, ch. 492, § 5(1); Laws, 1984, ch. 477, § 10; Laws, 2001, ch. 331, § 3, eff from and after July 1, 2001.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceeding, see § 41-21-69.

Hearing procedures, generally, see § 41-21-73.

Requirements for outpatient commitments, see § 41-21-74.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Provisions for impartial evaluation of the patient prior to termination of the initial commitment order and court review of such evaluation, including provision that such evaluation shall not preclude a hearing request under this section, see § 41-21-82.

Necessity of a hearing prior to determination of a need for continued commitment, see § 41-21-83.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his right to discharge; that being question for hospital authorities. *Hoye v. State*, 169 Miss. 111, 152 So. 644 (1934).

Showing on motion for new trial on ground one of jurors had formerly been

adjudicated lunatic, it appearing that he was not given a certificate of sanity upon discharge, was held insufficient to require new trial, where counsel, because of knowledge of juror's mental trouble, was deemed to have waived such juror's lack of mental capacity. *Ervin v. State*, 168 Miss. 145, 151 So. 177 (1933).

ATTORNEY GENERAL OPINIONS

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated

in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

RESEARCH REFERENCES

ALR. Validity, construction, application, and effect of Civil Rights of Institu-

tionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

§ 41-21-82. Report prior to termination of initial commitment or discharge.

Prior to the termination of the initial commitment order, the director of the facility shall cause an impartial evaluation of the patient to be made in order to assess the extent to which the grounds for initial commitment persist, the patient continues to be mentally ill, and alternatives to involuntary commitment are available. If the results of this impartial evaluation do not support the need for continued commitment, the patient shall be discharged.

The director shall file a written report with the committing court setting forth in detail the results of this evaluation and other facts indicating that the patient satisfies the statutory requirement for continued commitment and the findings of the examiner to support this conclusion. If, after reviewing the director's report, the court finds that the patient continues to be mentally ill and that there is no alternative to involuntary commitment, the commitment may be continued.

Nothing in this section shall preclude the patient, his counsel or another person acting in his behalf from requesting a hearing under Section 41-21-81 or 41-21-99.

SOURCES: Laws, 1984, ch. 477, § 11; Laws, 1985, ch. 454, § 4, eff from and after July 1, 1985.

Cross References — Report of and certificate of physicians' or physician's and psychologist's, nurse practitioner's or physician assistant's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either this section or § 41-21-87. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

The physician or local hospital director does not have the same authority with

regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. Tillman, Nov. 7, 2003, A.G. Op. 03-0542.

§ 41-21-83. Hearing on need for further treatment.

If a hearing is requested as provided in Section 41-21-74, 41-21-81 or 41-21-99, the court shall not make a determination of the need for continued

commitment unless a hearing is held and the court finds by clear and convincing evidence that (a) the person continues to be mentally ill or mentally retarded; and (b) involuntary commitment is necessary for the protection of the patient or others; and (c) there is no alternative to involuntary commitment. Hearings held pursuant to this section shall be held in the chancery court of the county where the facility is located; provided, however, that if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that said patient for any reason does not have the services of an attorney; provided, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.

The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.

The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility. An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

SOURCES: Laws, 1975, ch. 492, § 5(2-5); Laws, 1984, ch. 477, § 12; Laws, 1985, ch. 454, § 5; Laws, 1994, ch. 533, § 9; Laws, 1994, ch. 599, § 9; Laws, 2001, ch. 331, § 4, eff from and after July 1, 2001.

Cross References — Appeals in cases of persons of unsound mind generally, see § 11-51-9.

Applicability of this section to costs incurred when person in need of mental treatment is represented by public defender, see § 25-32-9.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Report by director of mental health facility regarding patient prior to termination of initial involuntary commitment order or discharge, see § 41-21-82.

Costs of a hearing or appeal under this section, see § 41-21-85.

Right of patient to request hearing at least once a year, see § 41-21-99.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

Pursuant to § 41-21-79, the cost of transportation of a mental patient should be paid out of county funds and the responsibility of the county of the patient's residence; however, other costs of transportation as identified in this section should be the responsibility of the State Board of Mental Health. Smith, Mar. 18, 2003, A.G. Op. #02-0219.

The standard for finding a person to be mentally ill or mentally retarded under this section is different than finding someone incompetent to stand trial under URCCC 9.06. Peterson, Apr. 23, 2004, A.G. Op. 04-0133.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 1 et seq. (initiation of proceedings to determine competency status).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 61 et seq. (notice of hearing).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (re-

lease, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 151-154 (adjudication of status of competency).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 161-163 (warrant for commitment).

§ 41-21-85. Payment of costs of hearing on need for further treatment.

All costs of the hearing or appeal under Section 41-21-83, including, but not limited to, costs of all writs, notices, petitions, appeals, and attorney's fees and transportation of the patient to and from the place of the hearing shall be borne by the treatment facility in those instances where the patient is indigent, provided that if the patient is not indigent, all costs shall be taxed to the patient.

SOURCES: Laws, 1975, ch. 492, § 5(6); Laws, 1984, ch. 477, § 13, eff from and after July 1, 1984.

Cross References — Applicability of this section to costs incurred when person in need of mental treatment is represented by public defender, see § 25-32-9.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 120 et seq.

§ 41-21-87. Discharge at behest of director of treatment facility.

(1) The director of either the treatment facility where the patient is committed or the treatment facility where the patient resides while awaiting admission to any other treatment facility may discharge any civilly committed patient upon filing his certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.

(2) A director of a treatment facility specified in subsection (1) above may return any patient to the custody of the committing court upon providing seven (7) days' notice and upon filing his certificate of same as follows:

(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; provided, however, that treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or

(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.

(3) No committing court shall enjoin or restrain any director of a treatment facility specified in subsection (1) above from discharging a patient pursuant to this section whose treating professionals have determined that the patient meets one of the criteria for discharge as outlined in subsection (1) or (2) of this section. The director of the treatment facility where the patient is committed may transfer any civilly committed patient from one facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.

(5) All providers of service in a treatment facility, whether in a community mental health/retardation center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all treatment facilities, community mental health/retardation centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.

SOURCES: Laws, 1975, ch. 492, § 6(1); Laws, 1984, ch. 477, § 14; Laws, 1997, ch. 587, § 4; Laws, 2001, ch. 331, § 5; Laws, 2004, ch. 547, § 2, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 587, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Mental Health Reform Act of 1997.'"

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Discharge of minor committed by youth court to State institution designed for special care to be made pursuant to this section, see § 43-21-611.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his

right to discharge; that being question for hospital authorities. *Hoye v. State*, 169 Miss. 111, 152 So. 644 (1934).

ATTORNEY GENERAL OPINIONS

The physician or local hospital director does not have the same authority with regard to a patient who is committed to East Mississippi State Hospital, or any other state institution, who is receiving treatment at a local hospital pending a bed at the state facility. In this situation, only the director of the facility to which the person was committed (the state facility) would have the authority to release or discharge a patient. *Tillman*, Nov. 7, 2003, A.G. Op. 03-0542.

Patients who have been judicially committed to East Mississippi State Hospital, who are receiving treatment in a local hospital in accordance with § 41-21-77 may be discharged by the director of the facility in accordance with either § 41-21-82 or this section. Neither of those statutes contemplates a hearing prior to discharge of the patient by the director. *Tillman*, Nov. 7, 2003, A.G. Op. 03-0542.

RESEARCH REFERENCES

ALR. Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 A.L.R.4th 1155.

Propriety of transferring patient found not guilty by reason of insanity to less restrictive confinement. 43 A.L.R.5th 777.

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 60 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161-164 (insane or mentally ill persons).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

§ 41-21-89. Discharge at behest of patient, attorney, relative or guardian.

Nothing in Sections 41-21-61 through 41-21-107 shall preclude any patient, his attorney, or relative or guardian from seeking a patient's release from a treatment facility by application for writ of habeas corpus; provided that the application shall be made to the chancellor of the county in which the patient is hospitalized. Provided, further, that if the patient is hospitalized at the Mississippi State Hospital at Whitfield, Mississippi, the said application shall be made to a chancellor of the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1975, ch. 492, § 6(2); Laws, 1984, ch. 477, § 15, eff from and after July 1, 1984.

Cross References — Habeas corpus generally, see §§ 11-43-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Patient's right to program of care and treatment designed to render further custody or institutionalization unnecessary, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Statutory provisions for commitment of persons in need of mental treatment not impairing validity of prior guardianships for persons of unsound mind, see § 93-13-128.

Procedure for restoration to reason and discharge of guardian of person for whom guardian has been appointed or who has been found in need of mental treatment, see § 93-13-151.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

When chancery court commits party to insane hospital, it does not pass upon his

right to discharge; that being question for hospital authorities. *Hoye v. State*, 169 Miss. 111, 152 So. 644 (1934).

RESEARCH REFERENCES

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 60 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Form 217 (writ of habeas corpus — directing officer executing writ to produce person detained by one not an officer — another form).

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161-164 (insane or mentally ill persons).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 221 et seq. (release, discharge, or recommitment of incompetent).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 261-287 (restoration to competency).

§ 41-21-91. Deportation of nonresidents.

The director of the treatment facility may transport any person who is now or may hereafter become a patient at a treatment facility and who is a legal resident of another state to the state of the residence of such patient, but only if arrangements to receive the patient have been made in the state to which he is to be returned.

SOURCES: Laws, 1975, ch. 492, § 6(3); Laws, 1984, ch. 477, § 16, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

§ 41-21-93. Warrant for patient absent without authorization.

If any such patient admitted or committed by a court to a treatment facility leaves without authorization, the director may immediately issue a warrant to any officer authorized to make arrests, commanding the arrest and return of said patient to the hospital from which he is departed.

SOURCES: Laws, 1975, ch. 492, § 6(4); Laws, 1984, ch. 477, § 17, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms incompetent by warrant, writ, or court (Rev), Incompetent Persons, Forms 41-56 order).
(apprehension and detention of alleged

§ 41-21-95. Payment of costs incurred in transporting discharged patients home or returning patients on unauthorized leave.

Costs of returning a patient who has left without authorization may be borne by the treatment facility from which the patient has been discharged or from which he has left without authorization.

SOURCES: Laws, 1975, ch. 492, § 6(5); Laws, 1984, ch. 477, § 18, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

§ 41-21-97. Confidentiality of hospital records and information; exceptions.

The hospital records of and information pertaining to patients at treatment facilities or patients being treated by physicians, psychologists (as defined in Section 73-31-3(e)), licensed master social workers or licensed professional counselors shall be confidential and shall be released only: (a) upon written authorization of the patient; (b) upon order of a court of competent jurisdiction; (c) when necessary for the continued treatment of a patient; (d) when, in the opinion of the director, release is necessary for the determination of eligibility for benefits, compliance with statutory reporting requirements, or other lawful purpose; or (e) when the patient has communicated to the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor an actual threat of physical violence against a clearly identified or reasonably identifiable potential victim or victims, and then the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor may communicate the threat only to the potential victim or victims, a law enforcement agency, or the parent or guardian of a minor who is identified as a potential victim.

SOURCES: Laws, 1975, ch. 492, § 7(1); Laws, 1984, ch. 477, § 19; Laws, 1991, ch. 598 § 1; Laws, 2005, ch. 316, § 1; Laws, 2006, ch. 430, § 2, eff from and after July 1, 2006.

Cross References — Regulation of hospital records generally, see §§ 41-9-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

Physician-patient privilege generally, see Rule 503, Miss. R. Evid.

JUDICIAL DECISIONS

1. In general.
2. Threats of violence.

1. In general.

Where an employee killed co-workers after being referred to counseling by the employer and an employee assistance provider (EAP), the EAP was not entitled to summary judgment as to negligence claims because counselors may have had a

duty to protect third parties from the specific threat, and a factual question existed as to whether the EAP should have reasonably foreseen the deadly attack. *Tanks v. NEAS, Inc.*, 519 F. Supp. 2d 645 (S.D. Miss. 2007).

A psychiatrist did not owe a duty to members of a patient's family to warn them of the possibility that the patient might attempt to injure them where, at

the time of the incident, § 41-21-97 precluded the release of confidential patient information except in enumerated instances, not including the possibility of harm to specific individuals. *Evans v. United States*, 883 F. Supp. 124 (S.D. Miss. 1995).

2. Threats of violence.

Miss. Code Ann. § 41-21-97 creates an exception to the psychologist-patient privilege under Miss. Code Ann. § 73-31-29 where the patient makes threats of physical violence. *Hearn v. State*, — So. 2d —, 3 So. 3d 722, 2008 Miss. LEXIS 607 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public

Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. *McGee*, Dec. 2, 2002, A.G. Op. #02-0543.

RESEARCH REFERENCES

ALR. Liability of one treating mentally afflicted patient for failure to warn or protect third persons threatened by patient. 83 A.L.R.3d 1201.

Statute of limitations applicable to third person's action against psychiatrist,

psychologist, or other mental health practitioner, based on failure to warn persons against whom patient expressed threats. 41 A.L.R.4th 1078.

§ 41-21-99. Continued care of patients.

The director shall obtain all the available facts relative to the illness of each patient admitted to said treatment facility. The director or a physician on the staff of said treatment facility shall, as often as practicable but not less frequently than every six (6) months, examine the patient and review the records as to the need for continued treatment of each patient and make the results of such examination a part of the patient's clinical record. The patient shall have the right to request a hearing at least annually, pursuant to Section 41-21-83. The patient shall be advised of his right to request a hearing and of his right to consult an attorney prior to his decision concerning whether or not to request such hearing, and the fact that the patient has been so advised shall be documented in the clinical record.

SOURCES: Laws, 1975, ch. 492, § 7(2); Laws, 1984, ch. 477, § 20, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Provisions for impartial evaluation of the patient prior to termination of the initial commitment order and court review of such evaluation, including provision that such evaluation shall not preclude a hearing request under this section, see § 41-21-82.

Need for hearing prior to determination of need for continued commitment, see § 41-21-83.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

There is no specific procedure outlined in Sections 41-21-61, et seq. regarding court orders to require committed patient to take medication; such a proceeding would be similar to procedures delineated

in Sections 41-21-81 and 41-21-99 and burden to obtain order would be upon treatment facility, and not on local authorities in originating jurisdiction. Zachary, March 2, 1994, A.G. Op. #94-0068.

§ 41-21-101. Admissions and commitments not adjudication of incompetency.

No admission or commitment to a treatment facility under Sections 41-21-61 through 41-21-107 or any finding of need for treatment, or any authorization of continued treatment under said sections (a) is an adjudication of legal incompetency, or (b) deprives the person of his right to exercise his civil rights, including, but not limited to, civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, or the right to enter into contractual relationships and to manage his property; nor does such admission, hospitalization, finding or authorization of continued hospitalization create any presumption that such person is incompetent.

SOURCES: Laws, 1975, ch. 492, § 7(3); Laws, 1984, ch. 477, § 21, eff from and after July 1, 1984.

Cross References — Drug courts, see §§ 9-23-1 et seq.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR. Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

§ 41-21-102. Patients' rights.

(1) A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the director of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others. Each use of a restraint and reason for such use shall be made part of the clinical record of the patient under the signature of the director of the treatment facility.

(2) A patient has the right to correspond freely without censorship. The director of the treatment facility may restrict receipt of correspondence if he determines that the medical welfare of the patient requires it. Any limitation

imposed on the exercise of patient's correspondence rights and the reason for it shall be made a part of the clinical record of the patient. Any communication which is not delivered to a patient shall be immediately returned to the sender. No restriction shall be placed upon correspondence between a patient and his attorney or any court of competent jurisdiction.

(3) Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The director of the treatment facility may restrict visits and phone calls if he determines that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient. No restriction shall be placed upon a patient's visitation at the treatment facility with or upon calls to or from his attorney.

(4) A patient has the right to meet with or call his personal physician, spiritual advisor, and counsel at all reasonable times. The patient has the right to reasonable accommodation of religious practice.

(5) A patient has the right to periodic medical assessment. The director of a treatment facility shall have the physical and mental condition of every patient assessed as frequently as necessary, but not less often than every six (6) months.

(6) A person receiving services under Sections 41-21-61 through 41-21-107 has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services unnecessary. The treatment facility shall devise a written program plan for each person which describes in behavioral terms the case problems, the precise goals, and to modify the program plan as necessary. The program plan shall be reviewed with the patient.

(7) Unless disclosure is determined to be detrimental to the physical or mental health of the patient, and unless notation to that effect is made in the patient's record, a patient has the right of access to his medical records.

(8) A patient has the right to be represented by counsel at any proceeding under Sections 41-21-61 through 41-21-107. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. In all proceedings under Section 41-21-61 through 41-21-107, counsel shall: (a) consult with the person prior to any hearing; (b) be given adequate time to prepare for all hearings; (c) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (d) be a vigorous advocate on behalf of his client.

(9) All persons admitted or committed to a treatment facility shall be notified in writing of their rights under Sections 41-21-61 through 41-21-107 at the time of admission.

SOURCES: Laws, 1984, ch. 477, § 22, eff from and after July 1, 1984.

Cross References — Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Record statement of reasons for respondent's waiver of rights at involuntary commitment hearing, see § 41-21-76.

Effect of commitment upon patients' exercise of their civil rights, see § 41-21-101.

Hearing on petition of voluntary admittee to Mississippi State Hospital at Whitfield to leave facility, see § 41-21-103.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR. Construction and Application of State Patient Bill of Rights Statutes. 87 A.L.R.5th 277.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j. 93 A.L.R. Fed. 706.

Am Jur. 53 Am. Jur. 2d, Mentally Impaired Persons §§ 75, 85 et seq.

JUDICIAL DECISIONS

1. Liability.

Department of mental health was found liable for negligence because a psychiatric hospital owed a duty of care to, inter alia, monitor the patient, and an injury during an escape was foreseeable; immunity un-

der Miss. Code Ann. § 11-46-9(d) did not apply either because the duties owed were not discretionary based on Miss. Code Ann. § 41-21-102(6). Miss. Dep't of Mental Health v. Hall, 936 So. 2d 917 (Miss. 2006).

§ 41-21-103. Voluntary admissions for treatment.

(1) Unless he or she has a legal guardian or conservator, a married person or a person eighteen (18) years of age or older may be admitted to a treatment facility as a voluntary admittee for treatment, provided that the director deems the person suitable for admission, upon the filing of an application with the director, accompanied by certificates of two (2) physicians or by one (1) physician and one (1) psychologist, one (1) nurse practitioner or one (1) physician assistant who certify that they examined the person within the last five (5) days and that the person is in need of observation, diagnosis and treatment. The director may accept applications from the person seeking admission or any interested person with the applicant's written consent.

(2) A mentally retarded person who is under the age of eighteen (18) years and who is not married may be admitted to a treatment facility upon application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(3) A mentally retarded or mentally ill person who is married or eighteen (18) years of age or older and who has a legal guardian or conservator may be admitted to a treatment facility upon application of his or her legal guardian

or conservator if authorization to make the application has been received from the court having jurisdiction of the guardianship or conservatorship and the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(4) A mentally ill person who is under the age of fourteen (14) years may be admitted to a treatment facility upon the application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(5) A mentally ill person who is fourteen (14) years of age or older but less than eighteen (18) years of age may be admitted to a treatment facility in the same manner as an adult may be involuntarily committed.

(6) Any voluntary admittee may leave a treatment facility after five (5) days, excluding Saturdays, Sundays and holidays, after he or she gives any member of the treatment facility staff written notice of his or her desire to leave, unless before leaving, the patient withdraws the notice by written withdrawal or unless within those five (5) days a petition and the certificates of two (2) examining physicians, or one (1) examining physician and one (1) psychologist, nurse practitioner or physician assistant, stating that the patient is in need of treatment, are filed with the chancery clerk in the county of the patient's residence or the county in which the treatment facility is located; however, if the admittee is at Mississippi State Hospital at Whitfield, the petition and certificate shall be filed with the chancery clerk in the county of patient's residence or with the Chancery Clerk for the First Judicial District of Hinds County, and the chancellor or clerk shall order a hearing under Sections 41-21-61 through 41-21-107. The patient may continue to be hospitalized pending a final order of the court in the court proceedings.

(7) The written application form for voluntary admission shall contain in large, bold-face type a statement in simple, nontechnical terms that the admittee may not leave for five (5) days, excluding Saturdays, Sundays and holidays, after giving written notice of his or her desire to leave. This right to leave must also be communicated orally to the admittee at the time of his or her admission, and a copy of the application form given to the admittee and to any parent, guardian, relative, attorney or friend who accompanied the patient to the treatment facility.

SOURCES: Laws, 1975, ch. 492, § 8; Laws, 1978, ch. 399, § 1; Laws, 1984, ch. 477, § 23; Laws, 2008, ch. 513, § 6, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment generally inserted feminine pronouns throughout; inserted “one (1) nurse practitioner or one (1) physician assistant” in (1); inserted “nurse practitioner or physician assistant” in (6); and made minor stylistic changes.

Cross References — Report of and certificate of physician’s or psychologist’s initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients’ rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Incompetent Persons §§ 33 et seq.

9A Am. Jur. Legal Forms 2d, Incompetent Persons, § 141:14 (application by incompetent person for voluntary commitment).

14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 14, 15 (petition or application — for involuntary judicial admission of mental incompetent — to hospital — for voluntary admission).

§ 41-21-105. Civil and criminal immunity.

(1) All persons acting in good faith in connection with the preparation or execution of applications, affidavits, certificates or other documents; apprehension; findings; determinations; opinions of physicians and psychologists; transportation; examination; treatment; emergency treatment; detention or discharge of an individual, under the provisions of Sections 41-21-61 through 41-21-107, shall incur no liability, civil or criminal, for such acts.

(2) No civil suit of any kind whatsoever shall be brought or prosecuted against the board, any member thereof, any director or employee for acts committed within the scope of their employment, except for wilful or malicious acts or acts of gross negligence.

SOURCES: Laws, 1975, ch. 492, § 9(1, 2); Laws, 1976, ch. 401, § 6, eff from and after July 1, 1976.

Cross References — Report of and certificate of physician’s or psychologist’s initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients’ rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Applicability.

1. In general.

This section immunizes good faith ac-

tions taken during the actual commitment process and speaks to wrongful commitment, unlawful detention, battery (based on non-consensual treatment), and the like; however, it does not immunize negli-

gent custodial care. *Carrington v. Methodist Med. Ctr., Inc.*, 740 So. 2d 827 (Miss. 1999).

Upon finding that children are in need of supervision, the Youth Court is vested by law with broad dispositional discretion, to be exercised in the best interest of the children, and the placement of children in a church operated children's home was within the court's authority. *In re M.R.L.*, 488 So. 2d 788 (Miss. 1986).

2. Applicability.

Physician was entitled to the immunity provided under Miss. Code Ann. § 41-21-

105(1) with respect to a patient's claims of negligence per se and medical negligence. The patient accused the physician of two negligence-based claims arising from his evaluation of her regarding her need for involuntary commitment for mental treatment; negligence was at the core of what the statute immunized. *Tebo v. Tebo*, 550 F.3d 492 (5th Cir. 2008).

RESEARCH REFERENCES

ALR. Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 A.L.R.4th 464.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Right to relief under Federal Civil

Rights Act of 1871 (42 USCS § 1983) for alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Am Jur. 28 Am. Jur. Proof of Facts 547, Confinement to Mental Institution, Proof No. 18 (proof of malice in attempt to have person committed).

§ 41-21-107. Criminal offenses.

Any person who conspires unlawfully to cause, or unlawfully causes, any person to be adjudicated in need of treatment or as incompetent or to be detained at, or admitted to, or hospitalized in a treatment facility, or any person who receives or detains any person in need of treatment, contrary to Sections 41-21-61 through 41-21-107, or any person who maltreats any person in need of treatment, or any person who knowingly aids, abets or assists and encourages any person in need of treatment, to be absent without permission from any treatment facility or custodian in which or by whom such person is lawfully detained, or any person who violates any provision contained in Sections 41-21-61 through 41-21-107 shall be guilty of a misdemeanor and upon conviction be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or imprisoned in the county jail not exceeding one (1) year, or both.

SOURCES: Laws, 1975, ch. 492, § 9(3); Laws, 1984, ch. 477, § 24, eff from and after July 1, 1984.

Cross References — For a similar provision applying to South Mississippi Retardation Center, see § 41-19-155.

Report of and certificate of physician's or psychologist's initial examination in involuntary commitment proceedings, see § 41-21-69.

Patients' rights while confined in treatment facility, and written notification thereof, see § 41-21-102.

Criminal offense of sending sane person to insane asylum, see § 97-3-13.

Crime of false confinement of sane person in insane asylum, see § 97-3-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Proceedings pertaining to persons in need of mental treatment, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR. Liability for malicious prosecution predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 455.

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 523.

Right to relief under Federal Civil Rights Act of 1871 (42 USCS § 1983) for

alleged wrongful commitment to or confinement in mental hospital. 16 A.L.R. Fed. 440.

Am Jur. 25 Am. Jur. Proof of Facts 3d 117, Proof of Psychotherapist's Negligence in Diagnosing and Treating a Patient's Mental Condition.

§ 41-21-109. Rehabilitation facilities for adolescents with mental illness or mental retardation; establishment.

(1) The purpose of this section is to provide modern and efficient rehabilitation facilities for adolescents with mental illness or mental retardation who have been committed for treatment by a court of competent jurisdiction under Section 41-21-61 et seq.

(2) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, using funds from bonds, monies appropriated by the Legislature for those purposes, federal matching or other federal funds, federal grants or other available funds from whatever source, shall provide for by construction, lease, lease-purchase or otherwise and equip the following juvenile rehabilitation facilities under the jurisdiction and responsibility of the Mississippi Department of Mental Health: Construction and equipping of two (2) separate facilities each of which could serve up to fifty (50) adolescents, and each of which will be located at sites approved by the Department of Mental Health that would be specifically designed to serve adolescents who meet commitment criteria as defined by Section 41-21-61. One (1) fifty-bed facility shall house adolescent offenders with mental illness, and the other facility shall house adolescent offenders with mental retardation. Priority admission to these facilities shall be those adolescents who have some involvement in the judicial system. These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling. The number of persons admitted to these facilities shall not exceed the number of beds authorized under this section or the number of beds licensed or authorized by the licensure and certification agency, whichever is less.

Those facilities shall be on property owned by the Department of Mental Health, or its successor, at one or more sites selected by the Department of

Mental Health on land that is either donated to the state or purchased by the state specifically for the location of those facilities.

(3) The facility located in Harrison County shall be known as the Specialized Treatment Facility for the Emotionally Disturbed, and the facility located in Brookhaven shall be known as the Mississippi Adolescent Center.

SOURCES: Laws, 1995, ch. 528, § 1; Laws, 2009, ch. 563, § 12, eff from and after passage (approved May 13, 2009.)

Amendment Notes — The 2009 amendment rewrote the section.

CRISIS INTERVENTION MENTAL HEALTH FUND

SEC.

41-21-151. Crisis Intervention Mental Health Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

§ 41-21-151. Crisis Intervention Mental Health Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Crisis Intervention Mental Health Fund. The purpose of the fund shall be to provide funding for the seven (7) mental health crisis centers in the state and the Special Treatment Facility located in Harrison County. Monies from the fund derived from assessments under Section 99-19-73 shall be administered and distributed by the State Treasurer upon warrants issued by the Department of Mental Health. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding mental health crisis centers and the Special Treatment Facility; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

SOURCES: Laws, 2004, ch. 543, § 2, eff from and after July 1, 2004.

SCREENING, TESTING, AND INVESTIGATION BY STATE BOARD OF HEALTH

SEC.

41-21-201. Newborn screening program.
 41-21-203. Testing of newborn children for certain conditions.
 41-21-205. Creation of Birth Defects Registry.

§ 41-21-201. Newborn screening program.

(1) The State Department of Health shall establish, maintain and carry out a comprehensive newborn screening program designed to detect hypothy-

roidism, phenylketonuria (PKU), hemoglobinopathy, congenital adrenal hyperplasia (CAH), galactosemia, and such other conditions as specified by the State Board of Health and as recommended by the American Academy of Pediatrics. The State Board of Health shall adopt any rules and regulations necessary to accomplish the program.

(2) The State Board of Health shall determine and specify the conditions that will be included in the comprehensive newborn screening program in addition to those conditions named in subsection (1) of this section, upon the advice and recommendations of a genetics advisory committee and in accordance with the recommendations of the American Academy of Pediatrics. The advisory committee shall be appointed by the Executive Director of the State Department of Health, and shall include at least two (2) pediatricians and one (1) consumer representative from a family that has experience with a newborn infant with an abnormal screening test. The State Department of Health shall maintain a list of each of the conditions included in the comprehensive newborn screening program, which shall be made available to physicians and other health-care providers who are required to provide for newborn screening testing under Section 41-21-203.

(3) The State Department of Health shall develop information materials about newborn screening tests that are available, which may be used by physicians and other health-care providers to inform pregnant women and parents.

SOURCES: Laws, 1979, ch. 388, § 1; Laws, 1984, ch. 416, § 1; reenacted, 1987, ch. 382, § 1; Laws, 1988, ch. 572, § 1; Laws, 2001, ch. 340, § 1; Laws, 2001, ch. 575, § 2; Laws, 2002, ch. 574, § 2, eff from and after Oct. 1, 2002.

Joint Legislative Committee Note — Section 1 of ch. 340, Laws of 2001, effective from and after July 1, 2001 (approved March 11, 2001), amended this section. Section 2 of ch. 575, Laws of 2001, effective from and after July 1, 2001 (approved April 7, 2001) also amended this section. As set out above, this section reflects the language of Section 2 of ch. 575, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2002, ch. 574, § 1, provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Ben Haygood Comprehensive Newborn Screening Program."

§ 41-21-203. Testing of newborn children for certain conditions.

(1) All newborn infants shall be screened by the physician or other health-care provider attending the infant, using tests that have been approved by the State Board of Health, to detect those conditions listed in Section 41-21-201 and the other conditions specified by the State Board of Health for the comprehensive newborn screening program. However, no such tests shall be given to any child whose parents object thereto on the grounds that the test

conflicts with his religious practices or tenets. The tests provided under the comprehensive newborn screening program shall be evaluated in laboratories located in the United States. The State Department of Health shall follow up all positive tests with the attending physician or other health-care provider who notified the department thereof, and with the parents of the newborn child. The services and facilities of the State Department of Health and those of other state boards, departments and agencies cooperating with the State Department of Health in carrying out the comprehensive newborn screening program shall be made available to all newborn infants with abnormal screening tests.

(2) The State Department of Health shall provide ongoing epidemiologic surveillance of the comprehensive newborn screening program to determine the efficacy and cost effectiveness of screening newborn infants.

SOURCES: Laws, 1979, ch. 388, § 2; Laws, 1984, ch. 416, § 2; reenacted, 1987, ch. 382, § 2; Laws, 1988, ch. 572, § 2; Laws, 2001, ch. 575, § 1; Laws, 2002, ch. 574, § 3; Laws, 2006, ch. 516, § 19; Laws, 2008, ch. 355, § 2, eff from and after passage (approved Mar. 26, 2008.)

Editor's Note — Laws of 2002, ch. 574, § 1, provides as follows:

“SECTION 1. This act shall be known and may be cited as the “Ben Haygood Comprehensive Newborn Screening Program.”

Amendment Notes — The 2008 amendment deleted former (3), which provided for the deposit of certain funds into the Mississippi Public Health Laboratory Construction and Underwood Building Repair, Renovation and Expansion Bond Sinking Fund created in former § 3 of Laws of 2006, ch. 516 (deleted by Laws of 2008, ch. 355, § 1).

§ 41-21-205. Creation of Birth Defects Registry.

(1) The State Board of Health shall establish in the State Department of Health a program to:

- (a) Identify and investigate birth defects; and
- (b) Maintain a central registry of cases of birth defects.

(2) The department shall design the registry program so that it will:

- (a) Provide information to identify risk factors and causes of birth defects;
- (b) Provide information on other possible causes of birth defects;
- (c) Provide for the development of strategies to prevent birth defects;
- (d) Provide for interview studies about the causes of birth defects; and
- (e) Provide for the collection of birth defect information.

(3) The board shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(4) The board in its rules and regulations shall specify the types of information to be provided to the birth defects registry and the persons and entities who are required to provide such information to the birth defects registry.

(5) The board by rule shall prescribe the manner in which records and other information are made available to the department.

(6) The department may obtain records and/or test results of individuals not reported or observed to have a birth defect reported to the department at a later date.

(7) The following persons who act in compliance with this section are not civilly or criminally liable for furnishing the information required under this section:

(a) A hospital, clinical laboratory, genetic treatment center or other health-care facility;

(b) An administrator, officer or employee of a hospital, clinical laboratory, genetic treatment center or other health-care facility; and

(c) A physician or employee of a physician.

(8) Information collected and analyzed by the department under this section shall be placed in a central registry to facilitate research and to maintain security.

(a) Data obtained under this section directly from the medical records of a patient is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this section. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this section.

(b) Information that may identify an individual whose medical records have been used for obtaining data under this section is not available for public inspection under the Mississippi Public Records Act of 1983.

(c) Statistical information collected under this section is public information.

(9) The department may use the registry to:

(a) Investigate the causes of birth defects and other health conditions as authorized by statute;

(b) Design and evaluate measures to prevent the occurrence of birth defects, and other conditions; and

(c) Conduct other investigations and activities necessary for the board and the department to fulfill their obligation to protect the public health.

(10) Any person or entity who misuses the information provided to the registry shall be subject to a civil penalty of Five Hundred Dollars (\$500.00) for each such failure or misuse. Such penalty shall be assessed and levied by the board after a hearing, and all such penalties collected shall be deposited into the State General Fund.

(11) The State Health Officer may appoint or delegate his authority for the purposes of this section to an advisory committee, not to exceed ten (10) persons, to assist in the design and implementation of this central registry with representation from relevant groups including, but not limited to, hospitals, physicians, board-certified clinical geneticists, personnel of the department, personnel of other appropriate state agencies, disabled persons (resulting from a birth defect) and parents of disabled children (resulting from a birth defect). If a central registry advisory committee is created by the State

Health Officer, the board shall consult and be advised by the committee on the promulgation of rules, regulations and procedures for the purposes of this section.

SOURCES: Laws, 1997, ch. 463, § 1, eff from and after July 1, 1997.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.
State Board of Health, see §§ 41-3-1 et seq.

Hospital records, generally, see §§ 41-9-67 et seq.

Prohibition against involuntary commitment of persons whose primary problems are physical disability associated with infant birth defects, see § 41-21-73.

CHAPTER 22

Hemophilia

SEC.

- 41-22-1. Definitions.
41-22-3. Program for care and treatment of sufferers.
41-22-5. Authority of state board of health.

§ 41-22-1. Definitions.

The words and terms as used in this chapter have the following meanings:

- (1) "State health officer" shall mean the state health officer of the state board of health, or his designated representative.
- (2) "Board" shall mean the state board of health.
- (3) "Hemophilia" shall mean a bleeding tendency resulting from a genetically determined deficiency factor in the blood.

SOURCES: Laws, 1974, ch. 340, § 1, eff from and after passage (approved March 14, 1974).

RESEARCH REFERENCES

ALR. Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107.

§ 41-22-3. Program for care and treatment of sufferers.

The State Board of Health is authorized to establish a program for the care and treatment of persons suffering from hemophilia. The program shall assist persons who require continuing treatment with blood and blood derivatives to avoid crippling, extensive hospitalization and other effects associated with this bleeding condition, but who are unable to pay for the entire cost of such services on a continuing basis despite the existence of various types of hospital and medical insurance.

SOURCES: Laws, 1974, ch. 340, § 2, eff from and after passage (approved March 12, 1974).

RESEARCH REFERENCES

ALR. Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107. Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

§ 41-22-5. Authority of state board of health.

The board is authorized to:

- (1) Develop standards for determining eligibility for care and treatment under this program;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from hemophilia, including self-administration, prevention and home care and other medical and dental procedures and techniques designed to provide maximum control over bleeding episodes typical of this condition;

(3) Extend financial assistance in order to provide diagnosis of and treatment for persons suffering from hemophilia and other related hemorrhagic disorders in obtaining blood, blood derivatives and concentrates and any other such necessary medical, surgical, dental, hospital, outpatient clinic service, rehabilitation or may participate in the cost of blood processing to the extent that such support will facilitate the supplying of blood, blood derivatives and concentrates and other efficacious agents to patients with hemorrhagic disorders.

(4) Employ all necessary administrative personnel as may be provided in its budget to carry out the provisions of this chapter; and

(5) Promulgate all rules and regulations necessary to effectuate the purposes of this chapter.

SOURCES: Laws, 1974, ch. 340, § 3, eff from and after passage (approved March 14, 1974).

RESEARCH REFERENCES

ALR. Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia. 1 A.L.R.3d 1107.

CHAPTER 23

Contagious and Infectious Diseases; Quarantine

| | |
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| Rubella Screening, Counseling and Vaccination | 41-23-101 |

IN GENERAL

| | |
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| SEC. | |
| 41-23-1. | Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties. |
| 41-23-2. | Penalties for violating health department orders with respect to life-threatening communicable diseases. |
| 41-23-3. | Repealed. |
| 41-23-5. | Authority of State Department of Health to investigate diseases. |
| 41-23-7 through 41-23-11. | Repealed. |
| 41-23-13. | Suppression of nuisances injurious to public health. |
| 41-23-15 through 41-23-25. | Repealed. |
| 41-23-27. | Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease. |
| 41-23-29. | Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease. |
| 41-23-30. | Free confidential testing for and treatment of sexually transmitted disease. |
| 41-23-31. | Donations to state board of health. |
| 41-23-33. | State Board of Health may call upon the federal government. |
| 41-23-35. | Repealed. |
| 41-23-37. | Immunization practices for control of vaccine preventable diseases; school attendance by unvaccinated children. |
| 41-23-39. | Definitions applicable to Section 41-23-41. |
| 41-23-41. | Emergency service provider notice of exposure to blood or body fluids; licensed facility duties regarding infectious disease. |
| 41-23-43. | Vaccination program for first responders who may be exposed to infectious diseases when sent to bioterrorism or disaster locations; definitions; participation in program; exemptions; vaccine shortages; notification of program; administration of vaccination program; program dependant upon receipt of federal funding. |
| 41-23-45. | Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students. |
| 41-23-47. | Preparation of statewide Hepatitis C Virus plan. |

§ 41-23-1. Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties.

(1) The State Board of Health shall adopt rules and regulations (a) defining and classifying communicable diseases and other diseases that are a danger to health based upon the characteristics of the disease; and (b) establishing reporting, monitoring and preventive procedures for those diseases.

(2) Upon the death of any person who has been diagnosed as having Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) or any Class 1 disease as designated by the State Board of Health, in a hospital or other health-care facility, in all other cases where there is an attending physician, and in cases in which the medical examiner, as defined in Section 41-61-53(f), investigates and certifies the cause of death, the attending physician, the person in charge of the hospital or health-care facility, or the medical examiner, as the case may be, shall report as soon as practicable to the Executive Officer of the State Board of Health or to other authorities the cause or contributing cause of death as required by the State Board of Health. Such reporting shall be according to procedures as required by the State Board of Health.

(3) Upon the death of any person who has been diagnosed as having Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), where there is not an attending physician, any family member or other person making disposition of the body who knows that such decedent had been diagnosed as having HIV/AIDS shall report this fact to the medical examiner as defined in Section 41-61-53(f), who shall report as soon as practicable to the Executive Officer of the State Board of Health or to other authorities the cause or contributing cause of death as required by the State Board of Health. Such reporting shall be according to procedures as required by the State Board of Health.

(4) Every practicing or licensed physician, or person in charge of a hospital, health-care facility, insurance company which causes to be performed blood tests for underwriting purposes or laboratory, shall report immediately to the Executive Officer of the State Board of Health or to other authorities as required by the State Board of Health every case of such diseases as shall be required to be reported by the State Board of Health. Such reporting shall be according to procedures, and shall include such information about the case, as shall be required by the State Board of Health. Insurance companies having such blood test results shall report immediately to the Executive Officer of the State Board of Health or to other authorities as required by the State Board of Health every case of such diseases as shall be required to be reported by the State Board of Health. The insurance company shall notify the individual on whom the blood test was performed in writing by certified mail of an adverse underwriting decision based upon the results of such individual's blood test but shall not disclose the specific results of such blood tests to the individual. The insurance company shall also inform the individual on whom the blood test was performed that the results of the blood test will be sent to the physician designated by the individual at the time of application and that such physician should be contacted for information regarding the blood test results. If a physician was not designated at the time of application, the insurance company shall request that the individual name a physician to whom a copy of the blood test can be sent.

(5) Any practicing or licensed physician, or person in charge of a hospital or health-care facility, who knows that a patient has a medical condition

specified by the Department of Health as requiring special precautions by health-care providers, shall report this fact and the need for appropriate precautions to any other institution or provider of health-care services to whom such patient is transferred or referred, according to regulations established by the State Board of Health.

(6) Any practicing or licensed physician or person in charge of a hospital, health-care facility or laboratory who fails to make the reports required under this section regarding Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) or any Class 1 disease or condition as designated by the State Board of Health shall be reported to the Board of Medical Licensure, in the case of a physician, or to the applicable licensing agency in the case of institutions, and such failure shall be grounds for suspension of license.

(7) Any person other than a practicing or licensed physician, or person in charge of a hospital or health-care facility, willfully failing to make the reports required under this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by confinement in the county jail for not more than thirty (30) days, or both.

(8) The provisions of this section are cumulative and supplemental to any other provision of law, and a conviction or penalty imposed under this section shall not preclude any other action at law, proceedings for professional discipline or other criminal proceedings.

(9) Notwithstanding any law of this state to the contrary, the State Board of Health is authorized to establish the rules by which exceptions may be made to the confidentiality provisions of the laws of this state for the notification of third parties of an individual's infection with any Class 1 or Class 2 disease, as designated by the State Board of Health, when exposure is indicated or there exists a threat to the public health and welfare. All notifications authorized by this section shall be within the rules established according to this subsection. All persons who receive notification of the infectious condition of an individual under this subsection and the rules established under this subsection shall hold such information in the strictest of confidence and privilege, shall not reveal the information to others, and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

(10) Each public or private correctional facility housing state offenders, federal offenders or offenders from any other jurisdiction shall require all offenders in the facility to be tested for tuberculosis and Human Immunodeficiency Virus (HIV) in conjunction with the rules and regulations of the State Department of Health. The reporting shall be according to procedures and shall include any information about the case that is required by the State Board of Health. In order to carry out the provisions of this section, the following shall apply:

(a) Any such public or private correctional facility may contract with the Mississippi Department of Corrections, the Mississippi State Depart-

ment of Health, or other such appropriate state, federal or local entity for the inspection, monitoring or provision of any assistance necessary or desirable to maintain appropriate facilities for the purpose of identification, prevention, and treatment of communicable diseases and other conditions considered prejudicial to public health; and

(b) Any such public or private correctional facility shall grant representatives of the State Department of Health, in the discharge of its duties, access to all areas of the facility and to the offenders and staff at all times. The facility shall reimburse the State Department of Health for all costs incurred for the control of communicable diseases or other conditions prejudicial to public health in the facility and for the costs incurred for the control of communicable diseases or other conditions prejudicial to public health spreading from the facility, staff or inmates to other individuals or property in the county or state.

SOURCES: Codes, 1906, § 2498; Hemingway's 1917, § 4847; 1930, § 4884; 1942, § 7040; Laws, 1983, ch. 522, § 3; Laws, 1988, ch. 557, § 1; Laws, 1989, ch. 556, § 1; Laws, 1992, ch. 398, § 1; Laws, 1997, ch. 532, § 1; Laws, 1998, ch. 507, § 1; Laws, 2000, ch. 449, § 1, eff from and after July 1, 2000.

Cross References — Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21. Executive officer of state board of health, see § 41-3-5.

Provision making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Prohibition of one having an infectious or contagious disease, as defined in this section, from working, volunteering, or residing in family child care home, see § 43-20-57.

Revocation or suspension of physician's license, see § 73-25-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

I. Under Current Law.

1. Tuberculosis testing.
- 2.-5. [Reserved for future use].

II. Under Former § 41-23-35.

6. In general.

I. Under Current Law.

1. Tuberculosis testing.

Correctional facilities are required to administer tuberculosis tests to state offenders, federal offenders, and offenders from any other jurisdiction; however, the statute does not consider pretrial detainees and, therefore, pretrial detainees have

no statutory right to tuberculosis testing. *Gibbs v. Grimmette*, 254 F.3d 545 (5th Cir. 2001), cert. denied, 534 U.S. 1136, 122 S. Ct. 1083, 151 L. Ed. 2d 983 (2002).

2.-5. [Reserved for future use].

II. Under Former § 41-23-35.

6. In general.

This section [Code 1942, § 7053] and other sections bestowed upon the state board of health the authority to make reasonable rules and regulations for the prevention of diseases and the protection of the health of the people. *Hawkins v. Hoyer*, 108 Miss. 282, 66 So. 741 (1914), error overruled, 66 So. 1015 (Miss. 1915).

ATTORNEY GENERAL OPINIONS

Medical examiner is required to report to health department all deaths of persons diagnosed with AIDS; court of competent jurisdiction would issue subpoena for

Board of Health records and Board would then have to comply with the request or ask the court to quash subpoena. West, Sept. 17, 1992, A.G. Op. #92-0522.

RESEARCH REFERENCES

ALR. Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Discovery of identity of blood donor. 56 A.L.R.4th 755.

Am Jur. 39 Am. Jur. 2d, Health §§ 53, 100-102.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 12.

66 Am. Jur. 2d, Records and Recording Laws § 46.19.

CJS. 39A C.J.S., Health and Environment §§ 29, 30, 88.

Law Reviews. Aids in the Classroom. 58 Miss. L. J. 349, Fall 1988.

§ 41-23-2. Penalties for violating health department orders with respect to life-threatening communicable diseases.

Any person who shall knowingly and willfully violate the lawful order of the county, district or state health officer where that person is afflicted with a life-threatening communicable disease or the causative agent thereof shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by imprisonment in the penitentiary for not more than five (5) years, or by both.

SOURCES: Laws, 1988, ch. 557, § 2, eff from and after July 1, 1988.

Cross References — Implied waiver of the medical privilege of patients regarding the release of medical information required to be reported by this section, see § 13-1-21.

Provisions making hospital records the property of the hospital subject to access by health officials in the discharge of their duties pursuant to this section, see § 41-9-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

AIDS infection as affecting right to attend public school. 60 A.L.R.4th 15.

Am Jur. 39 Am. Jur. 2d, Health §§ 53, 100-102.

§ 41-23-3. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

[Codes, 1906, § 2499; Hemingway's 1917, § 4848; 1930, § 4885; 1942, § 7041]

Editor's Note — Former § 41-23-3 provided a penalty for falsely disseminating rumors of virulent epidemic contagious diseases.

§ 41-23-5. Authority of State Department of Health to investigate diseases.

The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health.

SOURCES: Codes, 1906, § 2500; Hemingway's 1917, § 4849; 1930, § 4886; 1942, § 7042; Laws, 1983, ch. 522, § 4, eff from and after July 1, 1983.

Cross References — General duties of state board of health, see § 41-3-15.
Autopsy on petition of health officers to determine cause of death, see § 41-37-23.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 58 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161 et seq. (insane or mentally ill persons).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 16, 19 (complaint, petition, or declaration — against public health officials — wrongful quarantine and detention).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 33 (petition or application

— for writ of habeas corpus — illegal detention for purpose of compelling examination for contagious disease).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 351 (complaint, petition, or declaration — failure to warn against exposure to communicable disease).

CJS. 39A C.J.S., Health and Environment §§ 28 et seq.

§§ 41-23-7 through 41-23-11. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-23-7. [Codes, 1892, § 2279; 1906, § 2497; Hemingway's 1917, § 4846; 1930, § 4883; 1942, § 7039; Laws, 1898, p. 93]

§ 41-23-9. [Codes, 1906, § 2493; Hemingway's 1917, § 4842; 1930, § 4879; 1942, § 7035; Laws, 1900, ch. 123]

§ 41-23-11. [Codes, Hemingway's 1921 Supp. § 4884m; 1930, § 4932; 1942, § 7088; Laws, 1918, ch. 203]

Editor's Note — Former § 41-23-7 directed the state board to act upon outbreak of virulent epidemic contagious diseases.

Former § 41-23-9 required the boards of supervisors to pay certain expenses involved in suppressing diseases.

Former § 41-23-11 authorized counties and municipalities to appropriate funds for the suppression of diseases.

§ 41-23-13. Suppression of nuisances injurious to public health.

The State Board of Health, when informed by a county health officer, or otherwise, of the existence of any matter or thing calculated to produce, aggravate, or cause the spread of any epidemic or contagious disease, or to affect injuriously the health of the public or community, may declare the same a nuisance. When it does so, it shall notify the district attorney, county attorney, municipal attorney, county health officer, municipal health officer or town marshal, of the district where the nuisance exists, who shall forthwith commence proceedings by information in the circuit court to have the same abated. The parties in interest shall have five (5) days' notice of the proceedings, which shall be served as in ordinary suits. Such proceedings may be tried by the judge, in term-time or in vacation, in a summary way, and if the matter be urgent, it shall be tried without delay. However, the parties in interest shall have a jury if they demand it, which the judge shall cause to be summoned, if in vacation, returnable at some early day, to be fixed by him, and the matter shall be tried as other causes by judge and jury. If the matter be found to be a nuisance, the judge shall order the same abated, which order shall be executed by the sheriff or other proper officer, and an appeal shall not be allowed therefrom. This section shall not affect the right which municipalities may have to abate a nuisance, or any common law or equity proceedings for that purpose.

SOURCES: Codes, 1892, § 2277; 1906, § 2495; Hemingway's 1917, § 4844; 1930, § 4881; 1942, § 7037; Laws, 1922, ch. 234.

Cross References — Duties of county attorneys, see § 19-23-11.

Municipal attorneys, see § 21-15-25.

Duties of city marshal or chief of police, see § 21-21-1.

Duties of district attorneys, see § 25-31-11.

Investigation of nuisance questions by state board of health, see § 41-3-15.

Nuisances, generally, see §§ 95-3-1 et seq.

ATTORNEY GENERAL OPINIONS

For the abatement of public health nuisances, a county may notify the state board of health of the nuisance pursuant to this section or proceed under § 19-5-105, pertaining to the cleaning of private property, and the county may consider

passing an ordinance pursuant to § 19-5-9, which allows for the adoption of codes dealing with general public health, safety or welfare. Fillingane, Oct. 25, 2002, A.G. Op. #02-0586.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 55, 72 et seq., 93.

13A Am. Jur. Legal Forms 2d, Nuisances, § 188:52 (certificate of health officer — as to nuisance).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 2 (order — abating nuisance detrimental to public health).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 32 (complaint, petition, or

declaration — to recover cost of abating health nuisance).

CJS. 39A C.J.S., Health and Environment §§ 44-50.

Law Reviews. Rychlak, Common-Law remedies for environmental wrongs: The role of private nuisance. 59 Miss. L. J. 657, Winter, 1989.

§§ 41-23-15 through 41-23-25. Repealed.

Repealed by Laws, 1983, ch 522, § 50, eff from and after July 1, 1983.

§ 41-23-15. [Codes, 1892, § 2278; 1906, § 2496; Hemingway's 1917, § 4845; 1930, § 4882; 1942, § 7038]

§ 41-23-17. [Codes, 1906, § 2503; Hemingway's 1917, § 4852; 1930, § 4889; 1942, § 7045]

§ 41-23-19. [Codes, 1892, § 2280; 1906, § 2504; Hemingway's 1917, § 4853; 1930, § 4890; 1942, § 7046]

§ 41-23-21. [Codes, 1906, § 2501; Hemingway's 1917, § 4850; 1930, § 4887; 1942, § 7043]

§ 41-23-23. [Codes, 1906, § 2492; Hemingway's 1917, § 4841; 1930, § 4878; 1942, § 7034; Laws, 1900, ch. 108]

§ 41-23-25. [Codes, Hemingway's 1921 Supp. § 4884a; 1930, § 4921; 1942, § 7077; Laws, 1918, ch. 194]

Editor's Note — Former § 41-23-15 granted the state board of health the power to establish quarantine.

Former § 41-23-17 directed the state board of health to enact quarantine regulations applicable to railroads and common carriers.

Former § 41-23-19 authorized the state board of health to purchase sanitary and quarantine services.

Former § 41-23-21 authorized the governor to provide the board of health with requisite means to enforce a quarantine.

Former § 41-23-23 authorized the board of supervisors in counties to pass ordinances for compulsory smallpox vaccination.

Former § 41-23-25 prohibited persons with venereal disease from having sexual intercourse with another.

§ 41-23-27. Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease.

The State Board of Health shall have full power to isolate, quarantine or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper. Said board shall have full power to pass all such rules and regulations as to the isolation, quarantine, confinement, internment and treatment as may be needful.

Any person knowingly violating any rule or regulation promulgated by the state board of health, under the authority of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment or both.

SOURCES: Codes, Hemingway's 1921 Supp. §§ 4884b, 4884d; 1930, §§ 4922, 4924; 1942, §§ 7078, 7080; Laws, 1918, ch. 194; Laws, 1983, ch. 522, § 5, eff from and after July 1, 1983.

Cross References — Medical treatment of minor for venereal disease without consent or knowledge of parent or guardian, see § 41-41-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A claim against the county for services as a quarantine guard is not maintainable by suit, unless the minutes of the board of supervisors disclose an order establishing a local quarantine and also show that a

contract for such services was made. The record must also show that the claim founded on such contract was presented to the board of supervisors and was disallowed. *Marion County v. Woulard*, 77 Miss. 343, 27 So. 619 (1900).

RESEARCH REFERENCES

ALR. Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

Am Jur. 39 Am. Jur. 2d, Health § 63.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 161 et seq. (insane or mentally ill persons).

CJS. 39A C.J.S., Health and Environment §§ 37, 38.

§ 41-23-29. Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease.

Any person suspected of being afflicted with any such infectious sexually transmitted disease shall be subject to physical examination and inspection by any representative of the state board of health. For failure or refusal to allow such inspection or examination, such person may be punished as for a misdemeanor.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884c; 1930, § 4923; 1942, § 7079; Laws, 1918, ch. 194; Laws, 1983, ch. 522, § 6, eff from and after July 1, 1983.

Cross References — Medical treatment of minor for venereal disease without consent or knowledge of parent or guardian, see § 41-41-13.

JUDICIAL DECISIONS

1. In general.

A case holding that the affidavit was insufficient to charge statutory offense of failure or refusal to submit to examination

for venereal disease. *City of Jackson v. Mitchell*, 135 Miss. 767, 100 So. 513 (1924).

§ 41-23-30. Free confidential testing for and treatment of sexually transmitted disease.

County health departments shall provide testing for and treatment of sexually transmitted disease. Such testing and/or treatment shall be kept in strict confidence. The county boards of supervisors are directed to make known to the public, through available media, the confidentiality of the testing for and treatment of sexually transmitted disease.

SOURCES: Laws, 1975, ch. 386; Laws, 1983, ch. 522, § 7, eff from and after July 1, 1983.

§ 41-23-31. Donations to state board of health.

Any town, city or county is hereby authorized to make donations to the state board of health to assist in the enforcement of Sections 41-23-25 through 41-23-29.

SOURCES: Codes, Hemingway's 1921 Supp. § 4884e; 1930, § 4925; 1942, § 7081; Laws, 1918, ch. 194.

Editor's Note — Section 41-23-25 referred to in this section was repealed by Laws of 1983, ch. 522, § 50, eff from and after July 1, 1983.

Cross References — Municipal power to prevent spread of contagious and infectious diseases, see §§ 21-19-3, 21-19-17.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 10, 11. **CJS.** 39A C.J.S., Health and Environment §§ 18, 19.

§ 41-23-33. State Board of Health may call upon the federal government.

The State Board of Health, with the consent of the governor, when it deems it proper or necessary to do so, may call upon the government of the United States for such financial and medical aid as the necessities created by an epidemic or any other health emergency may require.

SOURCES: Codes, 1906, § 2502; Hemingway's 1917, § 4851; 1930, § 4888; 1942, § 7044; Laws, 1983, ch. 522, § 8, eff from and after July 1, 1983.

§ 41-23-35. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

[Codes, 1892, § 2287; 1906, § 2511; Hemingway's 1917, § 4860; 1930, § 4897; 1942, § 7053]

Editor's Note — Former § 41-23-35 provided penalties for violation of health rules.

§ 41-23-37. Immunization practices for control of vaccine preventable diseases; school attendance by unvaccinated children.

Whenever indicated, the state health officer shall specify such immunization practices as may be considered best for the control of vaccine preventable diseases. A listing shall be promulgated annually or more often, if necessary.

Except as provided hereinafter, it shall be unlawful for any child to attend any school, kindergarten or similar type facility intended for the instruction of children (hereinafter called "schools"), either public or private, with the exception of any legitimate home instruction program as defined in Section 37-13-91, Mississippi Code of 1972, for ten (10) or less children who are related within the third degree computed according to the civil law to the operator, unless they shall first have been vaccinated against those diseases specified by the state health officer.

A certificate of exemption from vaccination for medical reasons may be offered on behalf of a child by a duly licensed physician and may be accepted by the local health officer when, in his opinion, such exemption will not cause undue risk to the community.

Certificates of vaccination shall be issued by local health officers or physicians on forms specified by the Mississippi State Board of Health. These forms shall be the only acceptable means for showing compliance with these immunization requirements, and the responsible school officials shall file the form with the child's record.

If a child shall offer to enroll at a school without having completed the required vaccinations, the local health officer may grant a period of time up to ninety (90) days for such completion when, in the opinion of the health officer, such delay will not cause undue risk to the child, the school or the community. No child shall be enrolled without having had at least one (1) dose of each specified vaccine.

Within thirty (30) days after the opening of the fall term of school (on or before October 1 of each year) the person in charge of each school shall report to the county or local health officer, on forms provided by the Mississippi State Board of Health, the number of children enrolled by age or grade or both, the number fully vaccinated, the number in process of completing vaccination requirements, and the number exempt from vaccination by reason for such exemption.

Within one hundred twenty (120) days after the opening of the fall term (on or before December 31), the person in charge of each school shall certify to the local or county health officer that all children enrolled are in compliance with immunization requirements.

For the purpose of assisting in supervising the immunization status of the children the local health officer, or his designee, may inspect the children's records or be furnished certificates of immunization compliance by the school.

It shall be the responsibility of the person in charge of each school to enforce the requirements for immunization. Any child not in compliance at the

end of ninety (90) days from the opening of the fall term must be suspended until in compliance, unless the health officer shall attribute the delay to lack of supply of vaccine or some other such factor clearly making compliance impossible.

Failure to enforce provisions of this section shall constitute a misdemeanor and upon conviction be punishable by fine or imprisonment or both.

SOURCES: Laws, 1978, ch. 530, 1; Laws, 1983, ch. 522, § 9, eff from and after July 1, 1983.

Cross References — Powers of boards of trustees of school districts to require the vaccination of school children, see § 37-7-301.

Inclusion of immunization information in pupils' permanent records, see § 37-15-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2-5. [Reserved for future use].

II. Under Former Law.

6. Under former § 41-23-7.
7. Under former § 41-23-23.

I. Under Current Law.

1. In general.

Section 41-23-37 serves an overriding and compelling public interest which extends to the exclusion of a child until immunization has been effected; the provision of § 41-23-37 providing an exemption because of religious belief is in violation of the Fourteenth Amendment to the United States Constitution and is void. *Brown v. Stone*, 378 So. 2d 218 (Miss. 1979), cert. denied, 449 U.S. 887, 101 S. Ct. 242, 66 L. Ed. 2d 112 (1980).

1979), cert. denied, 449 U.S. 887, 101 S. Ct. 242, 66 L. Ed. 2d 112 (1980).

2-5. [Reserved for future use].

II. Under Former Law.

6. Under former § 41-23-7.

This section [Code 1942, § 7039] referred to in upholding the validity of a municipal ordinance requiring smallpox vaccination of school children. *Hartman v. May*, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

7. Under former § 41-23-23.

This section [Code 1942, § 7034] referred to in upholding the validity of a municipal ordinance requiring smallpox vaccination of school children. *Hartman v. May*, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

RESEARCH REFERENCES

ALR. Power of court or other public agency to order vaccination over parental religious objection. 94 A.L.R.5th 613.

Am Jur. 79 Am. Jur. 2d, Welfare Laws §§ 5-46.

§ 41-23-39. Definitions applicable to Section 41-23-41.

The following terms when used in Sections 41-23-39 and 41-23-41 shall have the following meanings herein ascribed:

(a) "Emergency medical technician" means a person licensed pursuant to Section 41-59-1 et seq., Mississippi Code of 1972, to provide emergency medical services as an emergency medical technician-ambulance, emergency

medical technician-intermediate, emergency medical technician-paramedic, or emergency medical technician-nurse-paramedic.

(b) "Fire department" means service groups (paid or volunteer) that are organized and trained for the prevention and control of loss of life and property from fire and/or other emergencies.

(c) "Fire fighter" means an individual who is assigned to fire fighting activity and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Infectious disease" means any condition as listed or determined by the State Department of Health that may be transmitted by an infected person.

(e) "Licensed facility" means hospital, nursing home, medical clinic or dialysis center, as licensed by the state to provide medical care, but shall not include a physician's office.

(f) "Bystanding caregiver" means any person who is unlicensed or noncertified in providing medical services or emergency medical services, who provides care or services to an injured person at the scene of an emergency before the arrival and rendering of emergency medical services by a licensed or certified emergency medical services provider.

SOURCES: Laws, 1988, ch. 557, § 6, eff from and after July 1, 1988; Laws, 1998, ch. 316, § 1, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in (a). The words "emergency medical technical-intermediate" and "emergency medical technical-nurse-paramedic" were changed to "emergency medical technician-intermediate" and "emergency medical technician-nurse-paramedic," respectively. The Joint Committee ratified the corrections at its April 26, 2001, meeting.

§ 41-23-41. Emergency service provider notice of exposure to blood or body fluids; licensed facility duties regarding infectious disease.

If, in the course of providing emergency services to any person subsequently transported to a licensed facility, an emergency medical technician, fire fighter, bystanding caregiver or other provider of emergency rescue services is exposed by direct contact to the patient's blood or other internal body fluids, the emergency medical technician, fire fighter, bystanding caregiver or the emergency service provider, or his/her employer, shall notify the licensed facility to which the patient is transported of the blood and/or body fluid exposure. If the patient is subsequently diagnosed as having an infectious disease specified by the State Department of Health as being transmissible by blood or other internal body fluids, the licensed facility shall notify the emergency medical technician, fire fighter, bystanding caregiver, emergency service provider, or his/her employer, in such detail and according to the manner prescribed by the State Board of Health in its regulations. The State

Board of Health shall adopt appropriate regulations to address the diseases involved.

SOURCES: Laws, 1988, ch. 557, § 7; Laws, 1998, ch. 316, § 2, eff from and after July 1, 1998.

Cross References — Definitions applicable to this section, see § 41-23-39.

RESEARCH REFERENCES

ALR. Tort liability for infliction of venereal disease. 40 A.L.R.4th 1089.

Products liability: what is an “unavoidably unsafe” product. 70 A.L.R.4th 16.

§ 41-23-43. Vaccination program for first responders who may be exposed to infectious diseases when sent to bioterrorism or disaster locations; definitions; participation in program; exemptions; vaccine shortages; notification of program; administration of vaccination program; program dependant upon receipt of federal funding.

(1) As used in this section:

(a) “Department” means the Mississippi State Department of Health, Bioterrorism Division;

(b) “Director” means the Executive Director of the State Board of Health;

(c) “Bioterrorism” means the intentional use of any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product, to cause or attempt to cause death, disease or other biological malfunction in any living organism;

(d) “Disaster locations” means any geographical location where a bioterrorism attack, terrorist attack, catastrophic or natural disaster or emergency occurs;

(e) “First responders” means state and local law enforcement personnel, fire department personnel, emergency medical personnel, emergency management personnel and public works personnel who may be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters and emergencies.

(2) The department shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary.

(3) Participation in the vaccination program shall be voluntary by the first responders, except for first responders who are classified as having “occupational exposure” to blood borne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 CFR 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(4) A first responder shall be exempt from vaccinations when a written statement from a licensed physician is presented indicating that a vaccine is medically contraindicated for that person or the first responder signs a written statement that the administration of a vaccination conflicts with their religious tenets.

(5) If there is a vaccine shortage, the director, in consultation with the Governor and the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders.

(6) The department shall notify first responders to the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(7) The department may contract with county and local health departments, not-for-profit home health-care agencies, hospitals and physicians to administer a vaccination program for first responders.

(8) This section shall be effective upon receipt of federal funding and/or federal grants for administering a first responders vaccination program. Upon receipt of that funding, the department shall make available the vaccines to first responders as provided in this section.

SOURCES: Laws, 2003, ch. 549, § 1, eff from and after July 1, 2003.

§ 41-23-45. Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students.

The State Department of Health shall prepare written educational information on the risks associated with meningitis and hepatitis A and B and the availability and effectiveness of available vaccines for these diseases. The department shall provide this written educational information to the Board of Trustees of State Institutions of Higher Learning and the State Board for Community and Junior Colleges to be used to inform students about meningitis and hepatitis A and B. This information shall be sent to students with their letters of acceptance for admission or included in the students’ admission packets.

SOURCES: Laws, 2003, ch. 549, § 2, eff from and after July 1, 2003.

§ 41-23-47. Preparation of statewide Hepatitis C Virus plan.

Not later than January 1, 2006, the State Department of Health, in collaboration with the University of Mississippi Medical Center and the Veterans Affairs Medical Center, shall prepare and deliver to the Legislature a statewide Hepatitis C Virus plan.

SOURCES: Laws, 2004, ch. 574, § 1, eff from and after July 1, 2004.

RUBELLA SCREENING, COUNSELING AND VACCINATION

SEC.

41-23-101. Rubella screening tests.

41-23-103. Counseling as to risks and benefits of rubella immunization.

41-23-105. Civil immunity for persons performing rubella tests, counseling and vaccinations.

§ 41-23-101. Rubella screening tests.

The state board of health is hereby authorized to offer rubella screening tests to all females of childbearing age and to collect fees to defray the costs of such tests, provided that such fees shall not exceed the applicable Medicaid rate.

SOURCES: Laws, 1981, ch. 414, § 1, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 27, 28. **CJS.** 39A C.J.S., Health and Environment § 36.

§ 41-23-103. Counseling as to risks and benefits of rubella immunization.

The state board of health shall counsel all females found after testing to be nonimmune to rubella as to the risks and benefits of immunization and as to the associated risks of birth defects in pregnancies occurring within ninety (90) days of vaccination.

SOURCES: Laws, 1981, ch. 414, § 2, eff from and after July 1, 1981.

Cross References — Civil immunity for persons reforming rubella counseling as provided in this section, see § 41-23-105.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 58 et seq. **CJS.** 39A C.J.S., Health and Environment § 36.

§ 41-23-105. Civil immunity for persons performing rubella tests, counseling and vaccinations.

Neither the state board of health nor any physician or nurse employed by the board who, in good faith and in the exercise of reasonable care, performs testing for susceptibility to rubella, renders counseling as provided in Section 41-23-103, or administers vaccinations against rubella shall be liable for any civil damages as a result of any acts committed in good faith and in the exercise of reasonable care or omissions in good faith and in the exercise of reasonable care by such persons in performing such testing, counseling or vaccinations.

SOURCES: Laws, 1981, ch. 414, § 3, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 31 et seq.

CJS. 39A C.J.S., Health and Environment § 36.

CHAPTER 24

Sickle Cell Testing Program

SEC.

- 41-24-1. Establishment of testing program for sickle cell anemia or sickle cell trait.
- 41-24-3. Persons who may be tested.
- 41-24-5. Distribution of educational materials.

§ 41-24-1. Establishment of testing program for sickle cell anemia or sickle cell trait.

The state board of health is hereby authorized and empowered to promulgate such rules and regulations necessary to establish a program of testing to determine the presence of the disease or condition known as sickle cell anemia or sickle cell trait.

SOURCES: Codes, 1942, § 7076-21; Laws, 1972, ch. 414, § 1; Laws, 1983, ch. 522, § 10, eff from and after July 1, 1983.

§ 41-24-3. Persons who may be tested.

In order to accomplish a program of testing for the disease or condition known as sickle cell anemia and/or sickle cell trait which will be most effective and efficient throughout the state, the state board of health may, by rule or regulation, require testing of only those persons who, because of race, ethnic group or other reasons are determined to be particularly susceptible to the condition.

SOURCES: Codes, 1942, § 7076-22; Laws, 1972, ch. 414, § 2; Laws, 1983, ch. 522, § 11, eff from and after July 1, 1983.

§ 41-24-5. Distribution of educational materials.

The state board of health is hereby authorized and empowered to prepare and distribute educational materials relating to sickle cell anemia and sickle cell trait in conjunction with the program of testing as provided for above. Such materials shall be distributed to school teachers and administrators in charge of children who are susceptible to the condition, as well as being distributed generally.

SOURCES: Codes, 1942, § 7076-23; Laws, 1972, ch. 414, § 3, eff from and after passage (approved April 27, 1972).

CHAPTER 25

Disinfection and Sanitation of Buildings and Premises

SEC.

- 41-25-1. State Board of Health empowered to make rules and regulations concerning disinfection and sanitation.
- 41-25-3. Assessment of fees.
- 41-25-5 through 41-25-11. Repealed.
- 41-25-13. Sanitary code for house trailers, house trailer camps, and tourist camps.

§ 41-25-1. State Board of Health empowered to make rules and regulations concerning disinfection and sanitation.

The State Board of Health shall have authority to make such sanitary investigations and prepare such rules and regulations governing the disinfection and sanitation of public buildings and vehicles as it may deem necessary for the protection and improvement of health.

SOURCES: Codes, 1906, § 2513; Hemingway's 1917, § 4862; 1930, § 4898; 1942, § 7054; Laws, 1983, ch. 522, § 12, eff from and after July 1, 1983.

Cross References — Duties of State Board of Health, generally, see § 41-3-15.

Duties of county health officer, generally, see § 41-3-41.

Regulation of hotels, see §§ 41-49-1 et seq.

RESEARCH REFERENCES

- Am Jur.** 13 Am. Jur. 2d, Buildings § 31. **CJS.** 39A C.J.S., Health and Environment §§ 32-34.
- 39 Am. Jur. 2d, Health §§ 76-79.

§ 41-25-3. Assessment of fees.

The board shall assess a fee in the following amount and for the following purpose:

Mobile home and recreational vehicle park annual permit fee\$50.00

The fee authorized under this section shall not be assessed for any mobile home and recreational vehicle park operated by a state or federal agency or institution.

SOURCES: Laws, 1986, ch. 371, § 3; Laws, 1989, ch. 313, § 2; Laws, 1989, ch. 547, § 2; Laws, 1991, ch. 606, § 2, eff from and after July 1, 1991.

Editor's Note — A former § 41-25-3 [Codes, 1906, § 2514; Hemingway's 1917, § 4863; 1930, § 4899; 1942, § 7055] Repealed by Laws of 1983, ch. 522, § 50, effective from and after July 1, 1983, directed, authorized and empowered the State Board of Health to make rules and regulations concerning disinfection and sanitation.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Buildings § 31. **CJS.** 39A C.J.S., Health and Environment §§ 18-23, 30-34, 51-57, 71, 95-100.
39 Am. Jur. 2d, Health §§ 109, 110.

§§ 41-25-5 through 41-25-11. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-25-5. [Codes, 1906, § 2515; Hemingway's 1917, § 4864; 1930, § 4900; 1942, § 7056]

§ 41-25-7. [Codes, Hemingway's 1917, § 4865; 1930, § 4901; 1942, § 7057]

§ 41-25-9. [Codes, 1906, § 2516; Hemingway's 1917, § 4866; 1930, § 4902; 1942, § 7058]

§ 41-25-11. [Codes, Hemingway's 1917, § 4867; 1930, § 4903; 1942, § 7059]

Editor's Note — Former § 41-25-5 mandated compliance with all rules and regulations of the state board of health.

Former § 41-25-7 specified penalties for failing to comply with the provisions of the prior sections.

Former § 41-25-9 authorized the board of supervisors to appropriate money for screening, fumigating and oiling to prevent yellow fever.

Former § 41-25-11 authorized health officers to enter premises mentioned in the previous section.

§ 41-25-13. Sanitary code for house trailers, house trailer camps, and tourist camps.

The state board of health shall have the power to establish sanitary regulations for house trailers, house trailer camps, and tourist camps, which shall be called the sanitary code. The sanitary code may include provisions for the sanitary construction, maintenance, regulation, inspection, equipment and control of house trailer camps, tourist camps, and house trailers, and for their registration, with particular and special provisions with respect to plumbing, drainage, water supply and disposal or removal of toilet excretion, garbage and all other waste or refuse substances and accumulations. No house trailer camp, tourist camp, or house trailer shall be located, operated or drawn within this state unless and until it has complied with such provisions. Nothing herein contained shall limit or qualify the power of the state department of health to adopt and enforce other, additional or emergency regulations for house trailer or tourist camps and house trailers whenever the health of the people of this state is endangered or threatened.

Every regulation adopted by the state board of health shall state the date on which it takes effect, and a copy thereof, duly signed by the executive officer of the state board of health, shall be filed as a public record in the state department of health and a copy thereof shall be sent by the state board of health to each health officer within the state. The state board of health shall

furnish certified copies of such code and its amendments and such certified copies shall be received in evidence in all courts or other judicial proceedings in the state. The provisions of the sanitary code shall have the force and effect of law.

Violations of the provisions of the sanitary code relating to house trailer camps, tourist camps, and house trailers are a misdemeanor. Each day on which a violation thereof continues is a separate offense.

SOURCES: Codes, 1942, § 8269; Laws, 1938, ch. 200; Laws, 1964, ch. 457, eff from and after passage (approved June 6, 1964).

Cross References — Ad valorem taxes on mobile homes, see §§ 27-53-1 et seq.
Highway regulation of house trailers, see § 63-5-25.
Regulation of mobile homes, generally, see §§ 75-49-1 et seq.

RESEARCH REFERENCES

ALR. Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks. 17 A.L.R.4th 106.

Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

Am Jur. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 6.

17A Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks, and Tourist Camps (complaint — failure to maintain water and septic systems — for damages).

CJS. 39A C.J.S., Health and Environment §§ 58, 59.

CHAPTER 26

Mississippi Safe Drinking Water Act of 1997

| | |
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IN GENERAL

| | |
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| 41-26-7. | Powers and duties of director. |
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| 41-26-15. | Prohibited acts. |
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§ 41-26-1. Short title.

This chapter shall be known and cited as the “Mississippi Safe Drinking Water Act of 1997.”

SOURCES: Laws, 1976, ch. 452, § 1; Laws, 1997, ch. 389, § 7, eff from and after July 1, 1997.

Cross References — Air and Water Pollution Control Law, see §§ 49-17-1 et seq.
Regulation of bottled drinking water, see §§ 75-29-801 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and effect involving chemical treatment of public of statute, ordinance, or other measure water supply. 43 A.L.R.2d 453.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act)(33 U.S.C.S. §§ 1251 et seq.) — Supreme Court cases. 163 A.L.R. Fed. 531.

§ 41-26-2. Legislative purpose and intent.

(1) The Legislature finds that:

(a) An adequate supply of safe, pure drinking water is essential to the public health and welfare and the maintenance of that supply through viable water systems is an important natural resource in the economic development of the state;

(b) The federal Safe Drinking Water Act, as amended, provides a comprehensive framework for regulating the collection, treatment, storage and distribution of potable water; and

(c) It is in the public interest of the state to assume primary enforcement responsibility under the federal Safe Drinking Water Act, as amended.

(2) The purposes of this chapter shall be:

(a) To establish a state program to assure provision of safe drinking water to the public by establishing drinking water standards consistent with the federal act and developing a state program to implement and enforce the standards. The standards shall protect the public health and welfare to the extent feasible using technology, treatment techniques and other means which are generally available.

(b) To develop a process for implementing plans for the provision of safe drinking water in emergencies;

(c) To provide public notice of potentially hazardous conditions that may exist in a water supply; and

(d) To authorize the director to prevent the creation of new potentially non-viable community water systems, to provide technical assistance to existing potentially non-viable systems to help those systems become viable and to encourage the elimination of non-viable systems whose problems cannot be corrected.

(3) It is the intent of the Legislature that the board in implementing Section 41-26-5(3) shall work cooperatively with organizations which provide training and assistance to public water systems. The board shall, consistent with state and federal law and rules and regulations and subject to the availability of funds, contract annually with and provide funding for those organizations. Any contract and funding shall be contingent upon receipt of an acceptable scope of work and cost proposal, as determined by the department and upon the contractor satisfactorily meeting performance objectives established in the contract.

SOURCES: Laws, 1997, ch. 389, § 1, eff from and after July 1, 1997.

Federal Aspects — Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

§ 41-26-3. Definitions.

For purposes of this chapter, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise:

(a) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or the administrator's designee.

(b) "Board" means the Mississippi State Board of Health.

(c) "Community public water system" means a public water system serving at least fifteen (15) individual service connections used by year-round consumers or regularly servicing at least twenty-five (25) individual consumers year-round.

(d) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase those facilities or equipment, at the location where the equipment will be used, including any preparation work at any location.

(e) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(f) "Cross connection" means any direct interconnection between a public water system and a non-public water system or other source which may result in the contamination of the drinking water provided by the public water system.

(g) "Department" means the Mississippi State Department of Health.

(h) "Director" means the State Health Officer or the health officer's designee.

(i) "Federal act" means the Safe Drinking Water Act of 1974, as amended, principally codified as 42 U.S.C.S. Section 300f et seq.

(j) "Federal agency" means any department, agency or instrumentality of the United States.

(k) "Interested party" means any person claiming an interest in the water system operation that is the subject of the hearing and who may be affected by the water system.

(l) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(m) "Municipality" means a city, town, village or other public body created by state law, or an Indian tribal organization authorized by law.

(n) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator under the federal act.

(o) "Nontransient, noncommunity public water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.

(p) "Person" means an individual, corporation, company, association, partnership, municipality or federal agency.

(q) "Public water system" means a system for providing to the public piped water for human consumption through pipes or other constructed

conveyances if the system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. The term includes but is not limited to:

(i) Any collection, treatment, storage and distribution facilities under control of the operator of the system and used primarily in connection with the system; and

(ii) Any collection or pre-treatment storage facilities not under the control which are used primarily in connection with the system.

(r) "Semi-public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has more than one but less than fifteen (15) service connections.

(s) "Supplier of water" means any person who owns, or controls a public water system.

(t) "Violator" means a public water system, an officer or director of a public water system, an operator, certified or otherwise, or any other person designated by a public water system or the department as the official responsible for the operation of a public water system.

SOURCES: Laws, 1976, ch. 452, § 2; Laws, 1997, ch. 389, § 8, eff from and after July 1, 1997.

ATTORNEY GENERAL OPINIONS

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in § 41-26-31. Amy, Nov. 14, 2003, A.G. Op. 03-0598.

§ 41-26-5. Mississippi Primary Drinking Water Regulations.

(1) In addition to any other duties required by law, the board shall have the following powers and duties concerning safe drinking water:

(a) To establish policies, requirements or standards governing the source, collection, distribution, purification, treatment and storage of water for public water systems as it deems necessary for the provision of safe drinking water;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing and in accordance with the Mississippi Administrative Procedures Law and Section 41-26-6, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing the powers and duties of the board under this chapter;

(c) To enter into, and to authorize the director to execute contracts, grants and cooperative agreements with, any federal or state agency or subdivision thereof, interstate agency, or any other person in connection with carrying out this chapter; and

(d) To discharge other powers, duties and responsibilities which may be necessary to implement this chapter.

(2)(a) Except as provided in Section 41-26-5(2)(b), regulations adopted under this section shall apply to each public water system in the state.

(b) Regulations shall not apply to a public water system:

(i) Which consists only of distribution and storage facilities, and which does not have any collection and treatment facilities;

(ii) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(iii) Which does not sell water to any person; and

(iv) Which is not a carrier which conveys passengers in interstate commerce.

(3) The board shall develop and implement a technical assistance program to help existing potentially non-viable community public water systems to become viable and to improve the technical, managerial or financial capabilities of small community public water systems. In developing this program, the board shall work cooperatively with organizations which currently provide training and assistance to public water systems.

SOURCES: Laws, 1976, ch. 452, § 3; Laws, 1997, ch. 389, § 9, eff from and after July 1, 1997.

Cross References — General duties of state board of health, see § 41-3-15.

Regulation of bottled drinking water, see §§ 75-29-801 et seq.

RESEARCH REFERENCES

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| ALR. Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply. 43 A.L.R.2d 453. | Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215. |
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§ 41-26-6. Adoption of rules and regulations governing public water systems.

(1) The board may adopt rules and regulations governing public water systems, but those rules and regulations shall, except as expressly required by law, be no more stringent or extensive in scope, coverage and effect than regulations promulgated by the United States Environmental Protection Agency.

(2) If federal regulations do not provide a standard, criteria or guidance addressing public water systems, the board may promulgate rules and regulations to address these matters when the board determines that the rules and regulations are necessary to protect the public health and welfare.

(3) Nothing in this section shall prohibit the director by order or in the approval of plans for construction or changes from placing additional requirements on a public water system on a case by case basis in order to provide for

the quantity and quality of drinking water or to protect the public health and welfare.

SOURCES: Laws, 1997, ch. 389, § 2, eff from and after July 1, 1997.

§ 41-26-7. Powers and duties of director.

In addition to any other duties required by law, the director shall have the following powers and duties concerning safe drinking water:

(a) To exercise general supervision over the administration and enforcement of this chapter and applicable rules and regulations;

(b) To make inspections and investigations, collect samples and carry on research and analyses as may be necessary to carry out this chapter and applicable rules and regulations;

(c) To enter at all reasonable times onto any property other than the interior of a private dwelling to make inspections, conduct investigations or studies or enforce this chapter and applicable rules and regulations;

(d) To enter into contracts, grants or cooperative arrangements with any federal or state agency or subdivision thereof, interstate agency or any other person;

(e) To receive financial and technical assistance from the federal government and other public or private agencies or organizations;

(f) To participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

(g) To establish adequate fiscal controls and accounting procedures to assure proper disbursement of and account for funds appropriated or otherwise necessary to carry out this chapter;

(h) To hold hearings, issue, modify or revoke orders, levy and collect any administrative fine or penalty and to enforce the laws, rules and regulations governing safe drinking water;

(i) To keep any records and make reports with respect to the activities of the department;

(j) To delegate any powers, duties and responsibilities as deemed appropriate to administer this chapter including delegation of any powers and duties regarding administrative enforcement to a designated administrative law judge or hearing officer; and

(k) To perform all acts necessary to carry out this chapter or the federal act.

SOURCES: Laws, 1976, ch. 452, § 4; Laws, 1997, ch. 389, § 10, eff from and after July 1, 1997.

Editor's Note — The section was enacted with a subsection (1), but no subsection (2). The subsection (1) designation has been deleted at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References — Regulation of bottled drinking water, see §§ 75-29-801 et seq.

§ 41-26-8. Requirements for construction and operation of public water systems; role of director [Subparagraph (2)(h) repealed effective July 1, 2010].

(1) The director shall exercise general supervision over the construction and operation of public water systems throughout the state. The general supervision shall include all of the features of construction and operation of public water systems which do or may affect the sanitary quality or the quantity of the water supply.

(2)(a) No person shall construct or change any community public water system or nontransient, noncommunity public water system until the plans for that construction or change have been submitted to and approved by the director. Plans for the construction or change must be prepared by a professional engineer registered in this state.

(b) In addition, each applicant for a new community public water system or nontransient, noncommunity public water system shall submit an operation and maintenance plan for review and approval by the director. The plan must be approved before beginning construction.

(c) In granting any approval under this section, the director may specify any modifications, conditions or limitations as may be required for the protection of the public health and welfare.

(d) The director may also review the source of the water and the quantity of water to be withdrawn.

(e) Records of construction, including plans and descriptions of existing portions of a public water system, shall be made available to the department upon request.

(f) Each applicant for a new community public water system or nontransient, noncommunity public water system shall submit financial and managerial information as required by the public utilities staff. Following review of that information, the executive director of the public utilities staff shall certify in writing to the director the financial and managerial viability of the system if the executive director determines the system is viable. The director shall not approve the construction until that certification is received.

(g) The director shall not approve any plans for changes to an existing community public water system or nontransient, noncommunity public water system, if the director determines the changes would threaten the viability of the system or if the changes may overload the operational capabilities of the system.

(h) Those public water systems determined by the director to be appropriately providing corrosion control treatment shall effectively operate and maintain the system's water treatment facilities in order to continuously provide the optimum pH of the treated water or optimum dosage of corrosion inhibitor. This paragraph shall repeal on July 1, 2010.

(3) Each semipublic water system shall notify the department of its location, a responsible party and the number of connections served. The

department shall, to the extent practicable, take appropriate actions to ensure that records on semipublic water systems are up-to-date. The board may require water well drillers to provide information on wells drilled for use by semipublic water systems. The department shall at least annually collect a sample from each semipublic water system and shall analyze that sample at no cost to the semipublic water system for microbiological contaminants and any other contaminants deemed appropriate by the department. If the department finds levels of contaminants exceeding the Mississippi Primary Drinking Water Standards, the department shall notify the responsible party and shall provide technical assistance to the system to correct the problem. No semipublic water system shall be subject to the penalty provided under Section 41-26-31.

SOURCES: Laws, 1997, ch. 389, § 3; Laws, 2002, ch. 472, § 1; Laws, 2005, ch. 366, § 1; Laws, 2007, ch. 401, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment extended the date of the repealer in (2)(h) from July 1, 2007, until July 1, 2010.

§ 41-26-9. Action by director when contaminant is present in or likely to enter public water system.

The director, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the public health, may take any actions deemed necessary to protect the public health. The actions may include, but shall not be limited to:

(a) Issuing any orders either on the initiative of the director or through a designated administrative law judge or hearing officer as may be necessary to protect the public health of users of the system, including travelers; and

(b) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

SOURCES: Laws, 1976, ch. 452, § 5; Laws, 1997, ch. 389, § 11, eff from and after July 1, 1997.

§ 41-26-11. Plan for provision of safe drinking water under emergency circumstances.

The director shall develop an adequate plan for the provision of safe drinking water under emergency circumstances. If, in the judgment of the director, emergency circumstances exist in the state for safe drinking water, the director may take any actions deemed necessary to provide safe drinking water where it otherwise would not be available.

SOURCES: Laws, 1976, ch. 452, § 6; Laws, 1997, ch. 389 § 12, eff from and after July 1, 1997.

§ 41-26-13. Notices of noncompliance, failure to perform monitoring, variances, and exemptions.

(1) A public water system shall, as soon as practicable, notify the county or district health department, the board and the administrator if one (1) of the following conditions exist: (a) the system is not in compliance with the Mississippi Primary Drinking Water Regulations; (b) the system fails to perform monitoring required by regulations adopted by the board; (c) the system is subject to a variance granted for an inability to meet a maximum contaminant level requirement; (d) the system is subject to an exemption; or (e) the system fails to comply with the requirements prescribed by a variance or exemption.

(2) In addition, the system shall provide public notice. The notice shall be published at least once every three (3) months in a newspaper of general circulation in the area which is served by the water system, as determined by the director. The notice shall not be placed in the legal section of the newspaper. The notice shall be furnished to the other communications media serving the area as soon as practicable after the discovery of any condition for which the notice is required. If the water bills of a public water system are issued more often than once every three (3) months, the notice shall be included in at least one (1) water bill of the system every three (3) months, and if a public water system issues its water bills less often than once every three (3) months, the notice shall be included in each water bill issued by the system.

SOURCES: Laws, 1976, ch. 452, § 7; Laws, 1997, ch. 389, § 13, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

§ 41-26-14. Cross connection control program; legislative intent; adoption of regulations; certain cross connections designated as low hazard; requirements and deadlines for high hazard and low hazard cross connections; inspections; discontinuance of service for violations; local ordinances regulating cross connections or backflow preventer devices may not be more stringent than provisions of this section.

(1) The department shall develop and implement a cross connection control program in accordance with this section. Before development of the cross connection control program, the department shall consult with the United States Environmental Protection Agency regarding the development of a federal cross connection control program. It is the intent of the Legislature that any cross connection control program developed and implemented by the

department be equivalent to a federal program, unless otherwise provided in this section.

(2)(a) The board shall adopt regulations defining a high hazard cross connection and a low hazard cross connection. The board shall determine which low hazard cross connections pose a very low risk and therefore are below regulatory concern. Those low hazard cross connections posing a very low risk shall be exempt from the requirements of this section and shall not be required to have a backflow preventer device. In addition, the regulations shall specify those backflow preventer devices which are recommended to address both high hazard and low hazard cross connections.

(b) For the purposes of this section, the following cross connections shall be considered as low hazard cross connections posing a very low risk:

(i) Any lawn sprinkler system or lawn irrigation system that is connected to a public water system and was professionally installed, regardless of whether the system is underground or above ground or whether the system has pop-up sprinkler heads;

(ii) Any swimming pool that is connected to a public water system and was professionally installed, or any swimming pool that is connected to a public water system and has a fill line with an anti-siphon air gap;

(iii) Any water fountain or cooler that provides drinking water for human consumption, that is connected to a public water system and was professionally installed;

(iv) Any fire sprinkler system that contains only water or a dry pipe and no chemicals, that is connected to a public water system and was professionally installed; and

(v) Any commercial establishment that is connected to a public water system, that contains no cross connections directly with a dangerous or hazardous substance or material.

(c) For the purposes of this section, any lawn sprinkler system or lawn irrigation system that is connected to a public water system and either injects or stores lawn chemicals or is connected to a wastewater supply shall be considered as high hazard cross connections and not exempt from the requirements of this section; however, the local public water system shall not be required to conduct an on-site inspection to identify any such system under this paragraph (c).

(d) Any regulations that were adopted before April 12, 2001, to implement a cross connection control program shall be void to the extent those regulations are in conflict or inconsistent with this section.

(3) Before December 31, 2000, each public water system shall develop and implement a cross connection control program and shall conduct a survey and on-site visits, as necessary, to locate cross connections within its system. Single family dwellings and multifamily dwellings shall be excluded from the survey, unless the public water system has reason to believe a cross connection exists.

(4) Before June 30, 2001, each property owner identified by the public water system as having a high hazard cross connection shall install a backflow preventer device. If the property owner already has a backflow preventer

device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly. Additional backflow preventer devices shall not be required for carbonated beverage dispensers if (a) the water supply connection to the carbonated beverage dispenser is protected against backflow by a backflow preventer device conforming to ASSE 1022 or by an air gap, and (b) the backflow preventer device and the piping downstream from the device are not affected by carbon dioxide gas.

(5) Before June 30, 2004, each property owner identified by the public water system as having a low hazard cross connection shall install a backflow preventer device. This requirement does not apply to any low hazard cross connection that poses a very low risk. If the property owner already has a backflow preventer device installed and the backflow preventer device functions properly, the public water system shall consider the backflow preventer device approved and shall allow the installed backflow preventer device to remain in place until the backflow preventer device fails to function properly.

(6) Each high hazard backflow preventer device shall be inspected and tested at least annually. If a high hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired and retested or shall install a new approved backflow preventer device within thirty (30) days of the initial test. If a low hazard backflow preventer device fails to function properly, the property owner shall have the backflow preventer device repaired or shall install a new backflow preventer device within ninety (90) days after the date the backflow preventer device first fails to function properly.

(7) All inspection and testing of backflow preventer devices under this section shall be conducted by a certified tester, unless otherwise provided in the regulations of the board. Certified backflow preventer device testers shall be licensed by the department under those conditions as the department deems appropriate.

(8) If a property owner fails to install a backflow preventer device or fails to have a backflow preventer device tested as required by this section, the public water system may discontinue service to that property owner until the failure is corrected.

(9) After the dates specified in subsections (4) and (5) of this section, it is unlawful to install or allow the installation or maintenance of any cross connection, auxiliary intake or bypass, unless the source and quality of water from the auxiliary supply, the method of connection and the use and operation of that cross connection, auxiliary intake or bypass has been approved by the director. However, this subsection does not authorize the director to modify, supersede or suspend any provision of this section regarding backflow preventer devices.

(10)(a) A municipality, county or public water system shall not adopt or implement any ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that is more stringent or

extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section. Any such ordinance, rule, regulation, standard or policy regarding cross connections or backflow preventer devices that was adopted before April 12, 2001, is void to the extent that it is more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or is in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

(b) If any municipality or county adopts or has previously adopted a building code, plumbing code or any other code that contains requirements or standards regarding cross connections or backflow preventer devices, the municipality or county or any public water system operating in the municipality or county shall not implement or enforce any such requirements or standards that are more stringent or extensive in scope, coverage or effect than the provisions of this section or any rules or regulations adopted by the board to implement this section, or are in conflict or inconsistent with the provisions of this section or any rules or regulations adopted by the board to implement this section.

SOURCES: Laws, 2000, ch. 573, § 1; Laws, 2001, ch. 587, § 1, eff from and after passage (approved Apr. 12, 2001.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected publishing errors in subsections (2)(d) and (10)(a). The words “before the effective date of House Bill No. 692, 2001 Regular Session” were changed to “before April 12, 2001.” The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 41-26-15. Prohibited acts.

The following acts and the causing of these acts are prohibited:

(a) Failure by a supplier of water to comply with the requirements of Section 41-26-13, or dissemination by that supplier of any false or misleading information with respect to notices required under Section 41-26-13, or with respect to remedial actions being undertaken to achieve compliance with Mississippi Primary Drinking Water Regulations;

(b) Failure by a supplier of water to comply with this chapter or applicable rules or regulations promulgated under this chapter, or with conditions of any variances or exemptions granted under this chapter;

(c) Failure by any person to comply with any order issued by the director, administrative law judge or hearing officer under this chapter;

(d) Refusal by a supplier of water to allow an authorized representative of the department to inspect any public water system;

(e) Contamination of a public water system;

(f) Intentionally damaging any pipe or other part of a public water system;

(g) Discharge of sewage or other waste at any location that may come into contact with a public water system intake, unless that discharge is permitted or authorized by a state or federal agency; and

(h) Abandonment or other termination of water services to more than fifty percent (50%) of the customers of a system by a supplier of water, without providing at least sixty (60) days' notice to all customers served by the public water system and the department.

SOURCES: Laws, 1976, ch. 452, § 8; Laws, 1997, ch. 389, § 14; Laws, 2000, ch. 573, § 2, eff from and after passage (approved May 20, 2000.)

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply. 43 A.L.R.2d 453.

Validity and construction of anti-water

pollution statutes or ordinances. 32 A.L.R.3d 215.

Liability of water supplier for damages resulting from furnishing impure water. 54 A.L.R.3d 936.

§ 41-26-17. Violation of chapter—complaint.

(1) When the director or an employee of the department has reason to believe that a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director, or any limitation or condition of an approval has occurred, the director shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provisions of this chapter, rule or regulation, order or approval alleged to be violated and the facts alleged to constitute that violation. The complaint shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint.

(2) Except as provided in subsection (1) of this section, upon the filing of a complaint by any person alleging a violation of this chapter, a rule or regulation promulgated under this chapter, any order of the director or any limitation or condition of an approval, the director shall conduct an investigation of the complaint. Any complaint filed under this subsection shall be in writing, signed by the person making the allegation and filed with the director. If the director finds a basis for the complaint, the director shall cause written notice of the complaint, specifying the charges or allegations made, to be served upon the alleged violator. The notice shall also require the alleged violator to appear before the director at a time and place specified in the notice to answer the charges. The time of appearance shall be at least five (5) days from the date of the service of the complaint. If the director finds no basis for the complaint, the director shall dismiss the complaint.

(3) The director shall afford an opportunity for a hearing to the alleged violator at the time and place specified in the notice. On the basis of the facts

determined at the hearing, the presiding official shall make findings of fact and conclusions of law and enter an order. The director shall give written notice of that order to the alleged violator and to any other persons appearing at the hearing or making written request for notice of the order. In addition to ordering corrections in the operation or maintenance of a public water system, and other measures which, in the opinion of the director, are necessary to ensure compliance with this chapter or the federal act or to safeguard the public health, the director may assess penalties as provided in Section 41-26-31.

(4) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of this chapter may be served on any person affected and proof of that service may be made in like manner as in case of service of a summons in a civil action. Proof of service shall be filed in the office of the director. In addition, service may be made by mailing a copy of the notice, order or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the department, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the director.

SOURCES: Laws, 1976, ch. 452, § 9; Laws, 1997, ch. 389, § 15, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Pollution control: preliminary or reduce effects of polluting practices. 49 mandatory injunction to prevent, correct, A.L.R.3d 1239.

§ 41-26-19. Powers of director; hearings under chapter.

(1)(a) Any hearing under this chapter may be conducted by the director or an administrative law judge or an administrative hearing officer designated by the director. The presiding official may conduct the hearings in the name of the director at any time and place as conditions and circumstances may warrant. The presiding official shall have the record of any hearing prepared which the official has conducted for the director.

(b) In any pending matters under this chapter, the director shall have the same powers to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing, as is now vested by law in the Mississippi Public Service Commission, for hearings before it. In addition, the director may issue all subpoenas, both at the instance of the petitioner and of the director. At any hearing the director, the staff of the department, any other petitioner or any other interested person, may offer proof, present witnesses and submit evidence. At the discretion of the presiding official, comments may be taken from members of the public who are subscribers of the public water system. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the circuit court shall have jurisdiction, upon application of the director or the director's representative, to issue an order requiring that person to appear and testify

or produce evidence as the case may require and any failure to obey that order of the court may be punished by the court as contempt. Failure to appear at any hearing, without prior authorization to do so from the director or the director's representative, may result in the director finding the alleged violator guilty of the charges complained of by default. An order may be entered, including the assessment of a penalty, which, in the opinion of the director, will best further the purposes of this chapter.

(2) All hearings shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the director or any interested person. If the request for transcription originates with an interested person, that person shall pay the cost prior to the production of the transcription.

SOURCES: Laws, 1976, ch. 452, § 10; Laws, 1997, ch. 389, § 16, eff from and after July 1, 1997.

§ 41-26-21. Final order; cost bonds; appeal.

Following the hearing, the presiding official shall enter an order which shall become a final order of the director, unless the petitioner or other interested person appearing at the hearing, shall, within ten (10) days after the date of the final order was made, appeal to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part. The petitioner or other interested person shall give a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to be fixed in the order appealed from. The cost bond shall be filed with and approved by the director, who shall certify the bond, together with a certified copy of the record of the hearing in the matter, to the chancery court, which shall be the record of the cause. Except as provided in this section, an appeal to the chancery court as provided in this section shall not stay the execution of a final order of the director.

Any person who is aggrieved by any final order or other decision issued under this section may, within ten (10) days after the date of that order or decision, petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, for an appeal with supersedeas. The chancellor shall grant a hearing on that petition. Upon good cause shown, the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made at the hearing before the presiding official. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in the chancellor's district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed and remanded to the director for enforcement. If a

prejudicial error is found, the matter shall be reversed and the chancery court shall remand the matter to the director for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply for the supersedeas to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

SOURCES: Laws, 1976, ch. 452, § 11; Laws, 1997, ch. 389, § 17, eff from and after July 1, 1997.

§ 41-26-23. Establishment of Drinking Water Quality Analysis Fund.

(1) There is created in the State Treasury a fund to be designated as the "Drinking Water Quality Analysis Fund." The fund shall be treated as a special trust fund. Interest earned on the principal in the fund shall be credited by the Treasurer to the fund. The fund may receive monies from any available public or private source, including fees, proceeds and grants. The department shall expend or utilize monies in the fund to pay all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the succeeding fiscal year. Except as provided in subsection (5) of this section, if the annual fees collected exceed the cost of administering the water quality analysis program in that fiscal year, the excess shall be applied to the cost of administering the program in the succeeding fiscal year. In the succeeding fiscal year, the total to be collected from fees shall be reduced by the excess retained in the fund and the assessment rates shall be adjusted proportionately.

(2) The department annually shall assess and collect fees for water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, which shall not exceed Three Dollars (\$3.00) per connection or Forty Thousand Dollars (\$40,000.00) per system, whichever is less. The department annually shall adopt by rule, in accordance with the Administrative Procedures Law and following a public hearing, a fee schedule to cover all reasonable direct and indirect costs of water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended. In adopting a fee schedule, the department shall consider the recommendations of the advisory committee created in this section, if those recommendations are made in a timely manner as provided.

(3) An advisory committee is created to study the program needs and costs for the implementation of the water quality analysis program and to conduct an annual review of the needs and costs of administering that program. The annual review shall include an independent recommendation on an equitable fee

schedule for the succeeding fiscal year. Each annual review report shall be due to the department by May 1. The advisory committee shall consist of one (1) member appointed by the Mississippi Rural Water Association, one (1) member appointed by the Mississippi Municipal Association, one (1) member appointed by the Mississippi Association of Supervisors and one (1) member appointed by the Mississippi Water and Pollution Control Operators Association, Inc.

(4) All suppliers of water for which water quality analysis and related activities as required by the federal Safe Drinking Water Act, as amended, are performed by the State Department of Health shall pay the water quality analysis fee within forty-five (45) days following receipt of an invoice from the department. In the discretion of the department, any supplier of water required to pay the fee shall be liable for a penalty equal to a maximum of two (2) times the amount of fees due and payable plus an amount necessary to reimburse the costs of delinquent fee collection for failure to pay the fee within ninety (90) days following the receipt of the invoice. Any person making sales to customers of water for residential, noncommercial or nonagricultural use and who recovers the fee required by this section or any portion thereof from any customer shall indicate on each statement rendered to customers that these fees are for water quality analyses required by the federal government under the Safe Drinking Water Act, as amended.

(5) There is created within the Drinking Water Quality Analysis Fund an equipment capital expenditure account, hereinafter referred to as the "account." The department may transfer any excess fees, not exceeding ten percent (10%) of the total fees assessed under this section, to the account. The balance in the account shall not exceed Five Hundred Thousand Dollars (\$500,000.00). Funds in the account shall be used by the department, as appropriated by the Legislature, to defray the costs of purchasing new equipment or repairing existing equipment for the analysis of drinking water.

SOURCES: Laws, 1997, ch. 523, § 1; Laws, 2006, ch. 409, § 1, eff from and after July 1, 2006.

Editor's Note — This section was also codified by Section 4 of ch. 389, Laws of 1997, effective July 1, 1997.

Federal Aspects — Federal Safe Drinking Water Act, see 42 USCS §§ 300f et seq.

§ 41-26-25. Creation of Public Water System Assistance Fund.

(1)(a) There is created in the State Treasury a fund to be designated as the "Public Water System Assistance Fund." The fund shall contain two (2) accounts, designated as the "Public Water System Technical Assistance Account" and the "Public Water Systems Bond Operations Account."

(b) Monies in the Public Water System Technical Assistance Account shall be used to pay the reasonable direct and indirect costs of providing technical assistance to public water systems under the program established in Section 41-26-5. Monies in the Public Water Systems Bond Operations Account shall be used as ordered by the court under Section 41-26-31.

(2) Expenditures may be made from the fund upon requisition by the director.

(3) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the fund.

(4) The fund may receive monies from any available public or private source, including, but not limited to, collection of fines, penalties or fees, proceeds from bond or other financial security forfeitures, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds.

SOURCES: Laws, 1997, ch. 389, § 5, eff from and after July 1, 1997.

Cross References — Proceeds of any forfeiture of bonds required under § 41-26-31 to be deposited in the Public Water Systems Bond Operations Account, see § 41-26-31.

Penalties and fines collected under § 41-26-31(1) to be deposited in the Public Water Systems Technical Assistance Account, see § 41-26-31.

§ 41-26-31. Enforcement of chapter; civil penalties.

(1) If the director finds any person guilty of a violation of this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval, the director may assess and levy a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation, except as provided in Section 41-26-8(3). Each day of a continuing violation is a separate violation. Any penalty shall be assessed and levied by the director after a hearing as provided in this chapter. Appeals from the imposition of the civil penalty may be taken to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county of the situs, in whole or in part, as provided in Section 41-26-15. If the appellant desires to stay the execution of a civil penalty assessed under this section, the appellant shall give bond with sufficient sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the director, as to which the stay of execution is desired. If the judgment is affirmed, the appellant shall pay all costs of the assessment entered against the appellant.

(2) In addition to or in lieu of the penalty provided in subsection (1) of this section, the director may institute and maintain in the name of the state any proceedings necessary or appropriate to enforce this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie, or in the Circuit, Chancery or County Court of the First Judicial District of Hinds County, as the case may be. The director may obtain mandatory or prohibitory injunctive relief, either temporary or permanent. In cases of imminent and substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written order has first been issued for the alleged violation.

(3) In determining the amount of any penalty under this section, the director shall consider at a minimum:

- (a) The willfulness of the violation;
- (b) Costs of restoration and abatement;
- (c) Economic benefit as a result of noncompliance;
- (d) The seriousness of the violation, including any harm or hazard to the public health and welfare; and
- (e) Past performance history.

(4)(a) The owner of any public water system found in violation of this chapter may submit to the director a plan for:

- (i) The physical consolidation of the system with one or more other viable public water systems;
- (ii) The consolidation of significant management and administrative functions of the system with one or more other viable public water systems or contract or satellite management of the system; or
- (iii) The transfer of ownership of the system.

(b) If the director approves the plan and the plan is fully implemented as determined by the director, the director shall waive any penalty assessed under this section for a violation identified in the approved plan before the date on which the action specified in the approved plan was completed.

(5)(a) In addition to or in lieu of any other penalty imposed under this section, the director may require the owner of any public water system found in violation to provide a performance bond or other acceptable financial security instrument including, but not limited to, cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or a similar federal banking or savings and loan insurance organization to the department. The bond or financial security must be approved by the director. The purpose of the bond or other financial security shall be the protection of the health and welfare of the customers of the system. The board shall establish by regulation the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. The director shall notify the owner, in writing, of the form and amount of security required.

(b) The director may petition the Chancery Court of the First Judicial District of Hinds County for forfeiture of the bond or other financial security, if the director determines that:

- (i) The continued operation or lack of operation of the system covered by this section represents a threat to the public health and welfare;
- (ii) All reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the violators; and
- (iii) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the director, or it appears the facility has been abandoned.

(c) The proceeds of any forfeiture shall be deposited in the Public Water Systems Bond Operations Account of the Public Water Systems Assistance

Fund and shall be used as ordered by the court to address or correct the noncompliance at the system. The proceeds shall be in addition to any other funds otherwise appropriated to the department and may be expended under the authority of this section without additional action of the Legislature or the Department of Finance and Administration.

(d) If the court finds that a system has been abandoned or that services of a system have been terminated, the court may enter any orders regarding continued operations of that system as it deems necessary to protect the public health and welfare.

(6)(a) Any penalty assessed by the director under this section shall be due and payable within thirty (30) days after notification of the violator of the order, and shall be due and payable jointly or severally, as the order may require or allow.

(b) If the assessed penalty is not paid within the thirty (30) days, or within any additional time as the director may allow, the director may file suit in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the order, collect the penalty and recover reasonable attorney's fees and all court costs.

(c) A copy of the administrative order shall be sufficient proof as to the decision of the director.

(7) All fines and penalties recovered or collected by the director under subsection (1) of this section shall be deposited in the Public Water Systems Technical Assistance Account of the Public Water Systems Assistance Fund.

SOURCES: Laws, 1997, ch. 389, § 6, eff from and after July 1, 1997.

Cross References — Exemption of semipublic water system from penalty provided under this section, see § 41-26-8.

Public Water Systems Band Operations Account of the Public Water Systems Assistance Fund, see § 41-26-25.

ATTORNEY GENERAL OPINIONS

Under appropriate circumstances, a professional engineer, or any other person, operating under and subject to the provisions of the Safe Water Act or the regulations adopted in furtherance of that Act, may be found to be a violator and subjected to the penalties prescribed in this section. Amy, Nov. 14, 2003, A.G. Op. 03-0598.

COMMUNITY PUBLIC WATER SYSTEM

SEC.

- 41-26-101. Management training for community public water system board members.
- 41-26-103. Repealed.

§ 41-26-101. Management training for community public water system board members.

(1) Each member elected or reelected after June 30, 1998, to serve on a governing board of any community public water system, except systems

operated by municipalities with a population greater than ten thousand (10,000), shall attend a minimum of eight (8) hours of management training within two (2) years following the election of that board member. Any member failing to complete the management training within two (2) years after his election shall be subject to removal from the board by the remaining members. If a board member has undergone training and is reelected to the board, that board member shall not be required to attend training as provided by this subsection.

(2) The management training shall be organized by the State Department of Health, in cooperation with the Mississippi Rural Water Association and other organizations. The management training shall include information on water system management and financing, rate setting and structures, operations and maintenance, applicable laws and regulations, ethics, the duties and responsibilities of a board member and other information deemed necessary by the department after consultation with the association and other organizations. The department shall develop and provide all training materials. The department may charge a fee not to exceed Seventy-five Dollars (\$75.00) per member to defray the actual costs of providing the materials and training. These costs shall be reimbursed to the board member as an expense of the community public water system.

(3) To avoid board members having to interfere with their jobs or employment, management training sessions may be divided into segments and, to the greatest extent possible, shall be scheduled for evening sessions. The department shall conduct management training on a regional basis and shall use community college or other public facilities for the convenience of board members.

(4) The department may make exceptions to and grant exemptions and variances to the requirements of this section for good cause shown.

SOURCES: Laws, 1997, ch. 392, § 1; Laws, 1998, ch. 569, § 2; Laws, 2007, ch. 374, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted “ten thousand (10,000)” for “two thousand five hundred (2,500)” in the first sentence of (1).

§ 41-26-103. Repealed.

Repealed by Laws 2002, ch. 383, § 1, effective July 1, 2003.

Laws, 1999, ch. 472, § 1; Laws, 2002, ch. 383, § 1, eff from and after July 1, 2002.

Editor’s Note — Former 41-26-103 was entitled “Department of Health to identify potentially nonviable community public water systems; technical assistance; notice to Public Utilities Staff if assistance refused; financial and/or managerial review.”

CHAPTER 27

Mosquito Control

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| Article 1. | County Mosquito Control Commissions | 41-27-1 |
| Article 3. | Rice Field Mosquito Control Law | 41-27-101 |

ARTICLE 1.

COUNTY MOSQUITO CONTROL COMMISSIONS.

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|-----------|---|
| SEC. | |
| 41-27-1. | County mosquito control commission authorized. |
| 41-27-3. | Director of State Board of Health to be member. |
| 41-27-5. | Duties of State Board of Health. |
| 41-27-7. | Outside aid may be accepted. |
| 41-27-9. | Powers of commission. |
| 41-27-11. | Plans and estimates of cost to be filed annually. |
| 41-27-13. | Source of funds. |
| 41-27-15. | How funds are to be expended. |
| 41-27-17. | Annual report to be filed. |
| 41-27-19. | Two counties may act jointly. |
| 41-27-21. | Fiscal management where two or more counties act jointly. |
| 41-27-23. | Boards of supervisors to indicate amount of funds to be applied to control work; notice to other counties; withdrawal by dissatisfied county. |
| 41-27-25. | Approval and allowance for payment of expenses and claims; forwarding of copies of minute entries of approved claims. |
| 41-27-27. | Submission of list of claims to boards of supervisors; issuance of county warrants. |
| 41-27-29. | Duties of county mosquito control commissions and joint mosquito control commission. |
| 41-27-31. | Elimination of county in default from membership of joint mosquito control commission. |
| 41-27-33. | Existing laws not affected. |

§ 41-27-1. County mosquito control commission authorized.

The county board of supervisors in any county of this state may, with the approval of the state health officer, appoint three (3) persons who will constitute a board of commissioners of said county to be known as "The _____ County Mosquito Control Commission," (inserting the name of the county in and for which the commissioners are appointed). The commissioners first so appointed in any county shall hold office respectively for the term of one (1), two (2) and three (3) years, as indicated and fixed in the order of appointment. All such commissioners, after the first appointment, shall be so appointed for the full term of three (3) years. Vacancies in the said commission occurring by resignation or otherwise shall be filled by the county board of supervisors with the approval of the state health officer, and the persons appointed to fill such vacancies shall be appointed for the unexpired term only. Such persons so appointed, when duly qualified, constituting such commission, and their successors are hereby created a body politic, with power to sue and be sued, to use a common seal and make bylaws.

The members of any such commission shall serve without compensation, except that the necessary expenses of each commissioner for actual attendance of meetings and a per diem as provided in Section 25-3-69 shall be allowed and paid. No commissioner shall be paid per diem in excess of two (2) meetings per month. The president and secretary shall furnish bond in the amount of five thousand dollars (\$5,000.00) each, the fee for same to be charged to available funds obtained for the work herein mentioned. No persons employed by the said commission shall be a member thereof. Before entering upon the duties of his office each commissioner shall take and subscribe an oath or affirmation before the clerk of the county in and for which he is appointed, to faithfully and impartially perform the duties of his office, which oath or affirmation shall be filed with the clerk of the county wherein the commission of which he is a member is appointed. Every such commission shall annually choose from among its members a president and treasurer, and employ a director who is trained in mosquito control operations, and whose duty it shall be to direct the work of the commission as its executive. Every such commission shall employ a clerk or secretary, and such other help as it may deem necessary to carry out the purposes of this article. It may also determine the duties and compensation of such employees, and make all rules and regulations respecting the same.

It shall be the duty of the county board of supervisors in each county to provide such commission with a suitable office where its meetings may be held, its maps, plans, documents, records, and accounts shall be kept, and office work carried on. The commission shall hold monthly meetings, and not less than two (2) members shall constitute a quorum.

SOURCES: Codes, 1930, § 4942, § 7097; Laws, 1928, ch. 190; Laws, 1983, ch. 547, eff from and after October 1, 1983.

Cross References — Vermin eradication programs in connection with solid wastes disposal facilities, see § 17-17-19.

Jurisdiction and powers of board of supervisors, generally, see § 19-3-41.

Rice field mosquito control see §§ 41-27-101 et seq.

ATTORNEY GENERAL OPINIONS

A municipality may perform the functions given to mosquito control commissions created by counties. Fernald, Aug. 8, 2003, A.G. Op. 03-0408.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health § 52.

§ 41-27-3. Director of State Board of Health to be member.

The state health officer shall be a member ex-officio of each county mosquito control commission and shall co-operate with them for the effective carrying out of their plans and work. The said state health officer shall serve without compensation, except that the necessary expenses actually incurred

by him in the attendance of meetings of said commissions shall be allowed and paid.

SOURCES: Codes, 1930, § 4943; 1942, § 7098; Laws, 1928, ch. 190.

§ 41-27-5. Duties of State Board of Health.

The State Board of Health, or its representative, shall, upon request of a county mosquito control commission, furnish the said commission with such surveys, maps, information, and advice as may be available for the prosecution of the work, or, as in its opinion, will be of advantage in connection therewith. The expenses of surveys shall be paid, in whole or in part, by the said commission.

SOURCES: Codes, 1930, § 4943; 1942, § 7098; Laws, 1928, ch. 190.

§ 41-27-7. Outside aid may be accepted.

The county board of supervisors and the county mosquito control commission, may with the approval of the state health officer receive and accept any aid whatsoever from any source calculated to further the success of a plan or plans based on this article.

SOURCES: Codes, 1930, § 4945; 1942, § 7100; Laws, 1928, ch. 190.

§ 41-27-9. Powers of commission.

Every such county mosquito control commission shall have the power to eliminate all breeding and producing places of mosquitoes within the county where it is appointed, and to do and perform all acts and to carry out all plans which in its opinion and judgment may be necessary or proper for the survey and elimination of breeding and producing places of mosquitoes or which will tend to exterminate mosquitoes within said county.

In addition to its primary responsibility for mosquito control, each commission shall also have the power and authority within its discretion and capability to provide services to any member county or any municipality within a member county on a one (1) time or continuing basis for the control and elimination of other pests of a public health or annoyance nature on any public property belonging to such county or municipality; provided, however, that the board of supervisors of a county or a governing body of a municipality located in a member county may request such services for specified private property by adoption of an order spread upon the minutes of such board or governing body stating that such services are necessary in the interest of public health and setting forth the facts upon which such finding is based. The actual cost of such services shall be paid in full by the county or municipality requesting same. All claims arising hereunder shall be billed directly to the requesting county or municipality and shall be processed by such county or municipality under normal claims procedure.

SOURCES: Codes, 1930, § 4946; 1942, § 7101; Laws, 1928, ch. 190; Laws, 1975, ch. 417, eff from and after passage (approved March 26, 1975).

Cross References — Pesticide Law of 1975, see §§ 69-23-1 et seq.
Pesticide Application Law of 1975, see §§ 69-23-101 et seq.

§ 41-27-11. Plans and estimates of cost to be filed annually.

Each county mosquito control commission shall, on or before the first day of November in each and every year, file with the state health officer a detailed estimate of the moneys required for the ensuing year, and a plan of the work to be done and the methods to be employed. The said state health officer shall have the power to approve, modify, or alter the said estimates, plans and methods. The estimate, plan and method finally approved by him shall be forwarded to the county board of supervisors in each county on or before the first day of December following its receipt.

SOURCES: Codes, 1930, § 4947; 1942, § 7102; Laws, 1928, ch. 190.

§ 41-27-13. Source of funds.

The county board of supervisors of each county, or other body having control of the finances thereof, may include the amount of money, approved by the County Mosquito Control Commission and the State Health Officer, annually in the general fund levy.

SOURCES: Codes, 1930, § 4948; 1942, § 7103; Laws, 1928, ch. 190; Laws, 1964, 1st Ex. Sess. ch. 16; Laws, 1985, ch. 536, § 9; Laws, 1986, ch. 400, § 24, eff from and after October 1, 1986.

Cross References — Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

§ 41-27-15. How funds are to be expended.

The moneys so raised, or so much thereof as may be required, may be paid from time to time for the operations, work, materials and labor of the county mosquito control commission, duly signed and approved by the president and secretary thereof by order of the board of supervisors.

SOURCES: Codes, 1930, § 4949; 1942, § 7104; Laws, 1928, ch. 190.

§ 41-27-17. Annual report to be filed.

It shall be the duty of each county mosquito control commission annually, on or before the 20th day of January in each year, to submit to the state health officer and the county board of supervisors in its respective county, a report setting forth the amount of moneys expended during the previous year, the methods employed, the work accomplished, and any other information which, in the judgment of the board of supervisors, may seem pertinent.

SOURCES: Codes, 1930, § 4950; 1942, § 7105; Laws, 1928, ch. 190.

§ 41-27-19. Two counties may act jointly.

Two or more counties may combine for the purpose of carrying out the provisions of this article in the respective counties, each county retaining all rights set forth in this article. The commissioners in the counties combined may enter into agreement to employ for purposes of economy, the same director and other personnel for the work of the commission in the counties so combined, all expenses, including salaries, labor, material, and the like being paid by the county in which the work is performed.

SOURCES: Codes, 1930, § 4944; 1942, § 7099; Laws, 1928, ch. 190.

§ 41-27-21. Fiscal management where two or more counties act jointly.

When two or more counties act jointly under the mosquito control provisions of this article, especially under the provisions of Section 41-27-19, the fiscal control thereof, including the apportionment of funds and the payment of expenses in connection with such work, shall be made as provided in Sections 41-27-23 through 41-27-31.

SOURCES: Codes, 1942, § 7099-01; Laws, 1964, 1st Ex. Sess. ch. 15, § 1, eff from and after passage (approved July 14, 1964).

§ 41-27-23. Boards of supervisors to indicate amount of funds to be applied to control work; notice to other counties; withdrawal by dissatisfied county.

The board of supervisors of each county so combined in such joint agreement shall, at the time of making and approving the budget of such county for the ensuing year, clearly state the amount of funds to be applied to mosquito control work under the authority of such joint agreement. It shall be the duty of the clerk of each board of supervisors, upon the fixing and approving of such budget, to notify by letter addressed to the presidents of the boards of supervisors of each other county included in such joint activity the amount provided for such mosquito control work in said budget. In event any county included in such joint activity by its board of supervisors should be dissatisfied with the amount of funds allocated by any other county within such group for the aforesaid purpose, such county shall have the right, by order spread upon its minutes and a copy thereof mailed to the president of the board of supervisors of each other county in such joint agreement, of the withdrawal of such dissatisfied county from said agreement and, insofar as such dissatisfied county shall be concerned, the said agreement shall be terminated.

SOURCES: Codes, 1942, § 7099-02; Laws, 1964, 1st Ex. Sess. ch. 15, § 2, eff from and after passage (approved July 14, 1964).

§ 41-27-25. Approval and allowance for payment of expenses and claims; forwarding of copies of minute entries of approved claims.

On or before the first day of each month following such agreement, and as long as the agreement remains in effect, the county mosquito control commission for each of the counties in such joint agreement shall meet and approve and allow for payment of all expenses, including salaries, labor, material, and the like to be paid by the county in which the work for such claims was done or performed and for which such materials were purchased during the month. The claims so approved for payment shall be entered upon the minutes of such county mosquito control commission and a copy thereof, certified by either the president or secretary of such county mosquito control commission, shall be mailed to the clerk of the board of supervisors of the county for which such county mosquito control commission was appointed, and a copy thereof mailed to the president of the board of supervisors and the president of the county mosquito control commission appointed and acting for the other counties in said agreement.

SOURCES: Codes, 1942, § 7099-03; Laws, 1964, 1st Ex. Sess. ch. 15, § 3, eff from and after passage (approved July 14, 1964).

§ 41-27-27. Submission of list of claims to boards of supervisors; issuance of county warrants.

Upon receipt of a certified copy of such approved list of claims and expenses, and at the time when other claims are considered by the several boards of supervisors of the counties in such agreement, the clerks of such boards of supervisors shall submit such list of approved claims to such boards of supervisors for their approval, and a county warrant shall be ordered issued, payable to the president and secretary of the joint, or combined, mosquito control commission of such counties.

SOURCES: Codes, 1942, § 7099-04; Laws, 1964, 1st Ex. Sess. ch. 15, § 4, eff from and after passage (approved July 14, 1964).

§ 41-27-29. Duties of county mosquito control commissions and joint mosquito control commission.

Each county mosquito control commission and the joint mosquito control commission shall be subject to and perform the following:

- (a) Upon receipt of the county warrant from each of the cooperating counties, the president and secretary of the joint commission shall cause said warrant to be deposited into the credit of an appropriate fund to be established by said joint commission in a bank which shall be one of the banks then or theretofore designated as a county depository by the board of supervisors of the county in which such bank is located and be disbursed by check or pay warrant over the signatures of the president and secretary for

such purposes and only for such purposes as have been approved and allowed as provided in Section 41-27-25. The president and secretary of the joint commission shall be liable on their official bonds for the disbursement of funds as herein provided.

(b) All purchases and expenditures shall be made in accordance with the laws applicable to county purchases and expenditures.

(c) The president and secretary issuing checks or pay warrants shall withhold from wages and salaries paid to each employee each month the required federal income tax, social security tax, and state retirement contribution in accordance with the requirements of the county in which the respective employees reside.

(d) At the end of each month the commission making disbursements shall report and remit the respective amounts so withheld to the chancery clerk of the county in which each employee resides, for incorporation by said clerk in the reports required to be made by said clerk, as county auditor for said county. Said report shall be made in such form as required by the chancery clerk in each county.

(e) The books and all records of each county commission and the joint commission shall be made available and subject to such audits as the respective county auditors of the cooperating counties and the state auditor may deem proper and necessary.

SOURCES: Codes, 1942, § 7099-05; Laws, 1964, 1st Ex. Sess. ch. 15, § 5, eff from and after passage (approved July 14, 1964).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 41-27-31. Elimination of county in default from membership of joint mosquito control commission.

In event a county being a member of such joint mosquito control commission shall fail or refuse, within a reasonable time, to issue and deliver to the president of such joint mosquito control commission a valid warrant in payment of its proportionate part of such expenses, the other county or counties being members of such joint mosquito control commission shall have the right, upon written notice to the president of the board of supervisors so in default, to eliminate such default county from membership in such joint mosquito control commission.

SOURCES: Codes, 1942, § 7099-06; Laws, 1964, 1st Ex. Sess. ch. 15, § 6, eff from and after passage (approved July 14, 1964).

§ 41-27-33. Existing laws not affected.

Nothing in this article shall be construed to alter, amend, modify, or repeal any statute conferring upon state or local boards of health any powers or duties in connection with the extermination of mosquitoes in this state, but this article shall be construed to be supplementary thereto.

SOURCES: Codes, 1930, § 4951; 1942, § 7106; Laws, 1928, ch. 190.

ARTICLE 3.

RICE FIELD MOSQUITO CONTROL LAW.

SEC.

- 41-27-101. Declaration of purpose.
- 41-27-103. County mosquito control commission created.
- 41-27-105. Members; vacancy.
- 41-27-107. General powers of commission.
- 41-27-109. Meeting; officers; bonds.
- 41-27-111. Compensation.
- 41-27-113. Commission to investigate feasibility of rice field mosquito control plan; report thereon.
- 41-27-115. Board of supervisors may require permit for rice production.
- 41-27-117. Application for permit.
- 41-27-119. Office facilities for commission; expenses; employees.
- 41-27-121. Other powers of commission.
- 41-27-123. Penalty for failure to comply with provisions of article.
- 41-27-125. Criminal penalty.
- 41-27-127. Funds for carrying on program; tax on property.
- 41-27-129. Cooperating with state or federal agency.
- 41-27-131. Funds shall be placed in special fund in county depository.
- 41-27-133. Commission may be abolished and program terminated.

§ 41-27-101. Declaration of purpose.

This article is passed with the knowledge and in recognition of the fact that the cultivation of rice systematically breeds a mosquito known as the "rice field mosquito," and that in areas where rice is produced within the State of Mississippi, such mosquitoes have become a nuisance affecting the health and welfare of residents in and around such areas, and this article is designed to provide a method of control and extermination of such mosquitos in rice producing areas.

SOURCES: Codes, 1942, § 7106-01; Laws, 1954, ch. 288, § 1.

Cross References — Mosquito control, generally, see §§ 41-27-1 et seq.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health § 23.

§ 41-27-103. County mosquito control commission created.

When, in any county of this state other than a county bordering on the Mississippi Sound or Gulf of Mexico, a petition, signed by fifty (50) or more qualified electors of such county, shall be presented to the board of supervisors of such county, requesting that a county mosquito control commission for such county be created, the board of supervisors may, within sixty (60) days from the date of the filing of the petition with the clerk of the board, create a county mosquito control commission, and the order creating said county mosquito control commission shall be entered on the minutes of the board of supervisors. The said order shall name three (3) commissioners, one (1) of whom shall be designated as temporary chairman, and shall set a time, date, and place for a meeting to organize said commission. The date of said organizational meeting shall be within sixty (60) days from the date of said order.

SOURCES: Codes, 1942, §§ 7106-02, 7106-18; Laws, 1954, ch. 288, §§ 2, 18.

§ 41-27-105. Members; vacancy.

There shall be three (3) members of the county mosquito control commission composed of the county agricultural extension agent, the county health officer and a rice producer. The county agricultural extension agent and the county health officer shall serve as permanent members by virtue of their office. The rice producer shall be appointed for a term of three (3) years. The board of supervisors shall have power to fill the vacancy caused by resignation or otherwise of the rice producer.

SOURCES: Codes, 1942, § 7106-03; Laws, 1954, ch. 288, § 3.

§ 41-27-107. General powers of commission.

When the county mosquito control commission has been created and the members thereof appointed and qualified, the members of the commission and their successors are hereby created and empowered as a body politic, with the power to sue and be sued, to use a common seal, to make bylaws and to do all other acts and things necessary and incident to carrying out the provisions of this article. The commission shall have the power to employ sufficient personnel to carry out the provisions of this article.

SOURCES: Codes, 1942, § 7106-04; Laws, 1954, ch. 288, § 4.

§ 41-27-109. Meeting; officers; bonds.

The first meeting of the county mosquito control commission shall be held at the time, date and place designated in the order of the board of supervisors creating same. The temporary chairman named by the board of supervisors shall preside at such meeting until a president and secretary shall be elected from among the members of the commission. The secretary shall keep a record of the minutes and proceedings of such commission in a minute book of the

commission. The commission shall have power to make such bylaws, rules, and regulations as may be necessary to carry out their duties and the commission shall provide for such regular meetings as are necessary, not to exceed one regular meeting per month, and to make provisions for calling special meetings. Before entering upon their duties as commissioners, such persons so appointed shall enter into a bond with sufficient sureties in the penal sum of five thousand dollars (\$5,000.00) conditioned upon the faithful performance of their duties. Said bond must be approved by the board of supervisors.

SOURCES: Codes, 1942, § 7106-05; Laws, 1954, ch. 288, § 5.

§ 41-27-111. Compensation.

The two (2) members of the county mosquito control commission who serve by virtue of their office shall serve without compensation. The appointed member of the commission shall serve without compensation except that the necessary expenses for actual attendance of the meetings of the commission and a per diem of five dollars (\$5.00), not to exceed the sum of twenty-five dollars (\$25.00) for any one (1) month, shall be allowed and paid by the board of supervisors as provided in this article.

SOURCES: Codes, 1942, § 7106-06; Laws, 1954, ch. 288, § 6.

§ 41-27-113. Commission to investigate feasibility of rice field mosquito control plan; report thereon.

The county mosquito control commission shall, immediately after the organizational meeting, make an investigation to ascertain and determine a feasible method for the control and extermination of rice field mosquitoes within the county. If a feasible method of control and extermination be found, the commission shall make investigations to determine the estimated cost of a mosquito control program on the following basis:

The commission shall, as nearly as possible, ascertain the estimated number of acres of land within the county upon which rice will be planted the next following crop year. The commission shall then estimate the total cost of the poison or other control material which would be needed for the control of rice field mosquitoes on the estimated acreage to be planted, the total cost of application of the poison or other control material, and the cost of administering the program, including salaries of such personnel as may be needed for the efficient administration of the program. When such information has been obtained by the commission, it shall submit a detailed report to the board of supervisors, showing all such costs and information, and the basis for such determination. Such investigation and report shall be submitted to the board of supervisors annually thereafter so long as a mosquito control program is continued, with such annual reports being filed not later than January 1st of each year.

The board of supervisors shall, within sixty (60) days after the commission's report is filed, determine whether or not the mosquito control program

described in said report is feasible or practical, considering among other factors the cost involved. If the board of supervisors finds that such a program is not feasible or practical, it shall enter an order abolishing the commission. All expenses incurred by said commission shall be paid by the board of supervisors out of the general county fund.

SOURCES: Codes, 1942, § 7106-07; Laws, 1954, ch. 288, § 7.

§ 41-27-115. Board of supervisors may require permit for rice production.

If the board of supervisors finds that a mosquito control program is feasible and practical, it shall enter an order requiring all persons, firms, associations and corporations who are to engage in planting or producing rice for the following crop year to obtain permits for such rice production. The fee for such permits shall be based on the total acreage of the applicant which is to be devoted to rice production. The board of supervisors may fix the cost per acre of such permit so that each of the estimated acres of rice to be planted during the following crop year shall bear its pro rata part of the total cost of the program.

SOURCES: Codes, 1942, § 7106-08; Laws, 1954, ch. 288, § 8.

§ 41-27-117. Application for permit.

The permits and applications therefor, shall be in a form prescribed by the board of supervisors. Each applicant shall, on or before March 31st of each year, make application for said permit at the office of the tax collector of said county. Such application shall include the name or names of the persons applying for such permit, a description of the land to be planted in rice for the following crop year, and such other information as may be required by the board of supervisors. Said application shall contain a statement to the effect that the applicant thereby gives his consent for the application of poison or other mosquito control material to the land to be planted in rice, by the commission or its employees. The tax collector, upon receipt of the application and the payment of the fee which shall be computed by multiplying the total number of acres of land to be planted in rice by such applicant by the cost per acre set by the board of supervisors, shall issue the permit to the applicant. All moneys collected from the sale of such permits shall be placed in a special fund for the mosquito control district in the county depository.

SOURCES: Codes, 1942, § 7106-09; Laws, 1954, ch. 288, § 9.

§ 41-27-119. Office facilities for commission; expenses; employees.

The board of supervisors shall furnish office facilities for the commission, and shall pay all expenses of the commission, including reimbursement for

expenses per diem, and salaries of employees, out of the funds obtained from the sale of permits. The tax collector of any county in which a county mosquito control program is in effect, may employ such person or persons as are necessary to take such applications and issue such permits. The compensation of said employees shall be allowed by the board of supervisors and paid out of the funds obtained from the sale of permits.

SOURCES: Codes, 1942, § 7106-10; Laws, 1954, ch. 288, § 10.

§ 41-27-121. Other powers of commission.

The county mosquito control commission shall have the right to employ such individuals as are necessary, and to purchase such equipment as shall be necessary, for the application of poison or other mosquito control material to the lands within the county to be planted in rice. The commission shall also have authority to contract with persons, firms or corporations, for the application of poison or other mosquito control material to the lands which will be planted in rice. The commission, its employees, or individuals contracted with for the purpose of applying such poison or other mosquito control material shall have the right to go upon the lands to be planted in rice within such district and apply such poison or other mosquito control material as may be needed to control and exterminate rice field mosquitoes.

SOURCES: Codes, 1942, § 7106-12; Laws, 1954, ch. 288, § 12.

§ 41-27-123. Penalty for failure to comply with provisions of article.

Any person, firm, association or corporation, engaging in the planting or producing of rice, who fails to comply with the provisions of this article where a county mosquito control program is in effect, shall be penalized as follows:

- (1) Five percent (5%) penalty, on total cost of permit, for applications filed after March 31st;
- (2) Five percent (5%) penalty, for applications in which the total acreage stated is less than the actual total acreage planted, where such mistake is not willful, such assessment applying to the additional cost of such permit;
- (3) Fifty percent (50%) penalty, for each acre where applicant willfully states acreage lower than that planted, the penalty applying to the acreage planted in excess of that stated in the permit.

The above penalties are to be in addition to the cost of the permit as determined by the board of supervisors. Said penalties shall be assessed by the county mosquito control commission whenever a violation of this article is discovered. In the event a proper permit is not obtained, then the cost of said permit and the penalties herein provided for, shall be a lien against all rice grown or produced by the person or persons failing to comply with the provisions of this article.

SOURCES: Codes, 1942, § 7106-13; Laws, 1954, ch. 288, § 13.

§ 41-27-125. Criminal penalty.

Anyone willfully refusing to comply with this article shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail not less than fifteen (15) days, nor more than ninety (90) days, or be both so fined and imprisoned.

SOURCES: Codes, 1942, § 7106-14; Laws, 1954, ch. 288, § 14.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-27-127. Funds for carrying on program; tax on property.

If the cost of the mosquito control program for any year exceeds the estimated cost and if the program funds become exhausted, then the board of supervisors may transfer from the general county fund, sufficient money to complete the program for such year. Such board may borrow money for such purpose by issuance of its note, said note and interest thereon to be paid on or before April 15th of the following year, and such board may levy a tax on the taxable property in the county sufficient to produce funds to pay said note and interest thereon.

SOURCES: Codes, 1942, § 7106-11; Laws, 1954, ch. 288, § 11.

Cross References — Local ad valorem tax levies, generally, see §§ 27-39-301 et seq.

§ 41-27-129. Cooperating with state or federal agency.

The board of supervisors and the county mosquito control commission are hereby authorized and empowered to accept funds from any state or federal agency and to cooperate with any state or federal agency in carrying out the provisions of this article.

SOURCES: Codes, 1942, § 7106-15; Laws, 1954, ch. 288, § 15.

§ 41-27-131. Funds shall be placed in special fund in county depository.

All funds used for a mosquito control program shall be placed in a special fund in the county depository and shall be paid out by the county auditor on order of the board of supervisors. The board of supervisors shall not order such funds paid except on orders signed by a majority of the members of the commission and supported by properly itemized invoices or accounts.

SOURCES: Codes, 1942, § 7106-16; Laws, 1954, ch. 288, § 16.

§ 41-27-133. Commission may be abolished and program terminated.

At any time the board of supervisors, in its discretion, may decide that a county mosquito control program is not feasible or that the need therefor no longer exists, in such event, the board of supervisors by order spread upon its minutes may abolish the county mosquito control commission and terminate such mosquito control program. In the event any such commission is abolished, any funds on hand for the use of such program, shall be transferred to the general fund of the county.

SOURCES: Codes, 1942, § 7106-17; Laws, 1954, ch. 288, § 17.

CHAPTER 28

Diabetes

SEC.

41-28-1. Definitions.

41-28-3. Program of public education and awareness of symptoms and care and treatment of diabetes to be established.

41-28-5. General duties of state board of health.

§ 41-28-1. Definitions.

The words and terms as used in this chapter shall have the following meanings:

(a) "State health officer" shall mean the state health officer of the state board of health, or his designated representative.

(b) "Board" shall mean the state board of health.

SOURCES: Laws, 1977, ch. 464, § 1, eff from and after passage (approved April 13, 1977).

§ 41-28-3. Program of public education and awareness of symptoms and care and treatment of diabetes to be established.

The State Board of Health is authorized to establish a program of public education and awareness of the symptoms and care and treatment of persons suffering from diabetes. The program shall be designed to disseminate information to the public, to the medical and paramedical communities, and others, relating to the symptoms, care and treatment of diabetes.

SOURCES: Laws, 1977, ch. 464, § 2, eff from and after passage (approved April 13, 1977).

§ 41-28-5. General duties of state board of health.

The board is authorized to:

(a) Assist in the development and expansion of educational programs for persons suffering from diabetes, including self-administration, prevention and home care and other medical and dental procedures and techniques designed to provide maximum control over any episodes typical of this condition;

(b) Enter into agreements with nonprofit organizations for the dissemination of such public information, through all forms of news media, local chapters or organizations, and other persons qualified to perform such functions;

(c) Employ all necessary administrative personnel as may be provided in its budget to carry out the provisions of this chapter; and

(d) Promulgate all rules and regulations necessary to effectuate the purposes of this chapter.

SOURCES: Laws, 1977, ch. 464, § 3, eff from and after passage (approved April 13, 1977).

CHAPTER 29

Poisons, Drugs and Other Controlled Substances

| | | |
|------------|---|-----------|
| Article 1. | Caustic Poisons | 41-29-1 |
| Article 3. | Uniform Controlled Substances Law | 41-29-101 |
| Article 5. | Other Narcotic Drug Regulations | 41-29-301 |
| Article 7. | Interception of Wire or Oral Communications | 41-29-501 |
| Article 9. | Pen Register | 41-29-701 |

ARTICLE 1.

CAUSTIC POISONS.

SEC.

| | |
|-----------|--|
| 41-29-1. | Short title. |
| 41-29-3. | Declaration of purpose. |
| 41-29-5. | “Dangerous caustic or corrosive substance” defined. |
| 41-29-7. | “Misbranded parcel, package, or container” defined. |
| 41-29-9. | Prohibited acts; guaranty; exceptions. |
| 41-29-11. | Penalties. |
| 41-29-13. | Confiscation. |
| 41-29-15. | Sheriff’s duties. |
| 41-29-17. | Duties of district attorney, county attorney and justice of the peace. |

§ 41-29-1. Short title.

This article may be cited as the Mississippi Caustic Poison Law of 1930.

SOURCES: Codes, 1930, § 4988; 1942, § 6830; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and 72 C.J.S., Poisons §§ 1 et seq.
Controlled Substances §§ 1 et seq.

CJS. 28 C.J.S., Drugs and Narcotics
§§ 14-20, 188, 189, 196.

§ 41-29-3. Declaration of purpose.

The distribution and/or sale of certain dangerous, caustic or corrosive acids, alkalis and other nonlabeled poisonous substances or articles in the State of Mississippi, shall be in keeping with the regulations mentioned and outlined in this article.

SOURCES: Codes, 1930, § 4980; 1942, § 6822; Laws, 1930, ch. 26.

Cross References — Regulation of economic poisons, see §§ 69-23-1 et seq.
Adulterated or misbranded drugs, see §§ 75-29-1 et seq.
Criminal offenses involving poisons, see §§ 97-27-21 et seq.

RESEARCH REFERENCES

Am Jur. 28 Am. Jur. Trials 427, Household Caustics Injury Litigation. **CJS.** 72 C.J.S., Poisons §§ 2-4.

§ 41-29-5. "Dangerous caustic or corrosive substance" defined.

The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten (10) per centum or more;

(b) Sulphuric acids and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten (10) per centum or more;

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five (5) per centum or more;

(d) Carboic acid ($\text{C}_6\text{H}_5\text{OH}$), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five (5) per centum or more;

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($\text{H}_2\text{C}_2\text{O}_4$) in a concentration of ten (10) per centum or more;

(f) Any salt of oxalic acid, other than cerium oxalate, and any preparation containing any such salt in a concentration of ten (10) per centum or more;

(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($\text{HC}_2\text{H}_3\text{O}_2$) in a concentration of twenty (20) per centum or more;

(h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten (10) per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime;

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten (10) per centum or more;

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten (10) per centum or more;

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO_3) in a concentration of five (5) per centum or more, and

(l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn" in a concentration of five (5) per centum or more.

However, the provisions of this article shall not apply to “white arsenic and sal soda.”

SOURCES: Codes, 1930, § 4981; 1942, § 6823; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am Jur. 48 Am. Jur. Proof of Facts 2d 401, Beryllium Poisoning. 28 Am. Jur. Trials 427, Household Caustics Injury Litigation.

48 Am. Jur. Proof of Facts 2d 431, Arsenic Poisoning.

§ 41-29-7. “Misbranded parcel, package, or container” defined.

The term “misbranded parcel, package, or container” means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing:

(a) The name of the article;

(b) The name and place of business of the manufacturer, packer, seller, or distributor;

(c) The word “POISON,” running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24 point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and

(d) Directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance. Such directions need not, however, appear on labels or stickers on parcels, packages, or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use.

SOURCES: Codes, 1930, § 4982; 1942, § 6824; Laws, 1930, ch. 26.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 243. Manufacturer’s Failure to Warn Consumer of Allergenic Nature of Product.

47 Am. Jur. Proof of Facts 2d 227,

§ 41-29-9. Prohibited acts; guaranty; exceptions.

No person shall sell, barter, or exchange, or receive, hold, pack, or display, or offer for sale, barter, or exchange, in the State of Mississippi, any dangerous caustic or corrosive substance, in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use. However, household products for cleaning and washing purposes, subject to this article,

and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail.

No person shall be liable to prosecution and conviction under this article when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this article. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this article.

This article is not to be construed as applying to any substance, subject to this article, sold at wholesale or retail for use by a retail druggist in filling, or in dispensing in pursuance of a prescription by a physician, dentist or veterinarian, or for use by or under the direction of a physician, dentist or veterinarian, or for use by a chemist in the practice or teaching of his profession, or for any industrial or professional use or for use in any of the arts and sciences.

SOURCES: Codes, 1930, § 4983; 1942, § 6825; Laws, 1930, ch. 26.

RESEARCH REFERENCES

| | |
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| <p>Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 243, 254. 3 Am. Jur. Proof of Facts 3d 225, Prod-</p> | <p>ucts Liability — Formaldehyde Fumes Emitted by Building Materials. CJS. 72 C.J.S., Poisons §§ 2-4, 8.</p> |
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§ 41-29-11. Penalties.

Any person violating the provisions of Section 41-29-9 shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00), or more than two hundred dollars (\$200.00), or by imprisonment of not more than ninety (90) days, or by both such fine and imprisonment, in the discretion of the court.

SOURCES: Codes, 1930, § 4985; 1942, § 6827; Laws, 1930, ch. 26.

§ 41-29-13. Confiscation.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any court within the jurisdiction of which the same is found, and seized for confiscation by a process of libel. If such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct. If sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer, but such substance shall not be sold contrary to the laws of the state. However, upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or

otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceeding shall conform as near as may be to proceedings in the condemnation of any article held contrary to the laws of this state.

SOURCES: Codes, 1930, § 4984; 1942, § 6826; Laws, 1930, ch. 26.

Cross References — Regulation of livestock brands by acid or chemicals, see §§ 69-29-101 et seq.

§ 41-29-15. Sheriff's duties.

The sheriff's office in each county in the state shall enforce the provisions of this article, and the sheriff is authorized and empowered to approve and register such brands and labels intended for use under the provisions of this article as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this article. However, in any prosecution under this article, the fact that any brand or label involved in said prosecution has not been submitted to said sheriff's office for approval, or if submitted, has not been approved by him, shall be immaterial.

SOURCES: Codes, 1930, § 4986; 1942, § 6828; Laws, 1930, ch. 26.

Cross References — Sheriff's duties, generally, see § 19-25-67.

§ 41-29-17. Duties of district attorney, county attorney and justice of the peace.

Every district attorney, county attorney or justice of the peace, to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this article, shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties provided in this article.

SOURCES: Codes, 1930, § 4987; 1942, § 6829; Laws, 1930, ch. 26.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Prosecutions by county attorneys, generally, see § 19-23-11.

Prosecutions by district attorneys, generally, see § 25-31-11.

Criminal jurisdiction of justice court judges, see § 99-33-1.

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

SEC.

- | | |
|------------|-------------------|
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PUBLIC HEALTH

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- 41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.
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- 41-29-163. Judicial review of final determinations, findings and conclusions.
- 41-29-165. Judicial review of convictions and orders.
- 41-29-167. Cooperative arrangements.
- 41-29-168. Required reports.
- 41-29-169. Drug abuse education programs.
- 41-29-171. Research programs on misuse and abuse of controlled substances.

- 41-29-173. Effect of Uniform Controlled Substances Law on pending proceedings.
- 41-29-175. Continuation of regulations.
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- 41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner.
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- 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.
- 41-29-183. Procedure for disposition of seized property; exclusiveness of remedy.
- 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.
- 41-29-187. Production of business records and documents; investigations of felony violations; copy costs; return of documents; liability for compliance; sealed applications; offense for disclosures; penalties.

§ 41-29-101. Title of article.

This article is to be known as the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-51; Laws, 1971, ch. 521, § 1, eff from and after passage (approved April 16, 1971).

Cross References — Drug Courts, see §§ 9-23-1 et seq.

Jurisdiction of state grand jury over cases involving Uniform Controlled Substances Law, see § 13-7-7.

Other narcotic drug regulations, see §§ 41-29-301 et seq.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

Issuance of licenses to carry concealed pistols or revolvers to persons found guilty of violations of this article, see § 45-9-101.

Drug participation program, see §§ 47-5-501 et seq.

Authority of commissioner of public safety to suspend license of operator without preliminary hearing for violation of Uniform Controlled Substances Law, see § 63-1-53.

Comparable Laws from other States — Alabama Code, §§ 20-2-1 et seq.

Arkansas Code Annotated, §§ 5-64-101 through 5-64-508.

Georgia Code Annotated, §§ 16-13-20 through 16-13-56.

Louisiana Revised Statutes Annotated, §§ 40:961 through 40:995.

North Carolina General Statutes, §§ 90-86 et seq.

Tennessee Code Annotated, §§ 53-11-301 through 53-11-452.

Texas Health and Safety Code, §§ 481.001 et seq.

Virginia Code Annotated, §§ 54.1-3400 et seq.

Federal Aspects — Federal Controlled Substances Act, see 21 USCS §§ 801 et seq.

RESEARCH REFERENCES

ALR. Modern status of the law concerning entrapment to commit narcotics offense — state cases. 62 A.L.R.3d 110.

Am Jur. Jurisdictions adopting Uniform Controlled Substances Law, see Am. Jur. 2d Desk Book, Item No. 124.

25 Am. Jur. 2d, Drugs and Controlled Substances §§ 21-27, 141 et seq., 189 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 210 et seq., 263 et seq.

72 C.J.S., Poisons §§ 2-4.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Defense of Narcotics Cases (Matthew Bender).
Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-103. Purpose.

The purpose of this article is to make, wherever possible, the law of Mississippi uniform with that of states having the same or similar laws.

SOURCES: Codes, 1942, § 6831-52; Laws, 1971, ch. 521, § 2, eff from and after passage (approved April 16, 1971).

§ 41-29-105. Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. Such word does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman. This definition shall not be applied to the term "agent" when such term clearly designates a member or officer of the Bureau of Narcotics or other law enforcement organization.

(c) "Board" means the Mississippi State Board of Medical Licensure.

(d) "Bureau" means the Mississippi Bureau of Narcotics. However, where the title "Bureau of Drug Enforcement" occurs, that term shall also refer to the Mississippi Bureau of Narcotics.

(e) "Commissioner" means the Commissioner of the Department of Public Safety.

(f) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of Sections 41-29-113 through 41-29-121.

(g) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(h) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(i) "Director" means the Director of the Bureau of Narcotics.

(j) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner,

including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(k) "Dispenser" means a practitioner who dispenses.

(l) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(m) "Distributor" means a person who distributes.

(n) "Drug" means (1) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and (4) a substance intended for use as a component of any article specified in this paragraph. Such word does not include devices or their components, parts, or accessories.

(o) "Hashish" means the resin extracted from any part of the plants of the genus *Cannabis* and all species thereof or any preparation, mixture or derivative made from or with that resin.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term "manufacture" does not include the preparation, compounding, packaging or labeling of a controlled substance in conformity with applicable state and local law:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(r) "Marihuana" means all parts of the plant of the genus *Cannabis* and all species thereof, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds, excluding hashish.

(s) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw; and

(4) Cocaine, coca leaves and any salt, compound, derivative or preparation of cocaine, coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 41-29-111, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such word does include its racemic and levorotatory forms.

(u) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(v) "Paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law. It includes, but is not limited to:

(i) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(ii) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(iii) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(v) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(vi) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(vii) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(viii) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(ix) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(x) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

(xi) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(xii) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; and

13. Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (i) Statements by an owner or by anyone in control of the object concerning its use;

- (ii) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

- (iii) The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Law;

- (iv) The proximity of the object to controlled substances;

- (v) The existence of any residue of controlled substances on the object;

(vi) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Law shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;

(vii) Instructions, oral or written, provided with the object concerning its use;

(viii) Descriptive materials accompanying the object which explain or depict its use;

(ix) National and local advertising concerning its use;

(x) The manner in which the object is displayed for sale;

(xi) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(xii) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(xiii) The existence and scope of legitimate uses for the object in the community;

(xiv) Expert testimony concerning its use.

(w) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(x) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(y) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state; and

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(z) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(aa) "Sale," "sell" or "selling" means the actual, constructive or attempted transfer or delivery of a controlled substance for remuneration, whether in money or other consideration.

(bb) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(cc) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

SOURCES: Codes, 1942, § 6831-56; Laws, 1971, ch. 521, § 6; Laws, 1972, ch. 520, § 5; Laws, 1974, ch. 415, § 1; Laws, 1981, ch. 502, § 1; Laws, 1982, ch. 323, § 1; Laws, 2005, ch. 404, § 4, eff from and after July 1, 2005.

Cross References — Definition of "valid prescription," as it pertains to prescriptions for controlled substances, for the purposes of this article, see § 41-29-137.

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

False representation of counterfeit substance, see § 41-29-146.

Paraphernalia as defined in this section being subject to forfeiture, see § 41-29-153.

Summary forfeiture of paraphernalia, as defined in this section, see § 41-29-179.

Prohibition and punishing for furnishing controlled substances or narcotic drugs to offenders, or taking such items on property occupied by them, see §§ 47-5-191 to 47-5-195.

Dentists, generally, see §§ 73-9-1 et seq.

Physicians, generally, see §§ 73-25-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

State presented sufficient evidence to find beyond a reasonable doubt that defendant was guilty of each element of the crime of manufacturing marijuana; defendant admitted that the marijuana plants found in the woods were his and the forensic analysis report confirmed that the plants and substances recovered from the woods and defendant's residence were indeed marijuana. *Williams v. State*, 971 So. 2d 581 (Miss. 2007).

Under the statute, distribute and deliver effectively meant the same thing as distribute meant to deliver other than by administering or dispensing a controlled substance. *Hurlburt v. State*, 803 So. 2d 1277 (Miss. Ct. App. 2002).

Distributing a controlled substance included transactions that were sales as well as transactions that may not be considered sales; intent of the statute was to thwart the exchange or transfer of the substance whether accompanied by consideration or not. *Meek v. State*, 806 So. 2d 236 (Miss. 2001), cert. denied, 537 U.S. 826, 123 S. Ct. 115, 154 L. Ed. 2d 37 (2002).

Person who is personally present at drug transaction and who aids and abets

sale may be convicted for sale notwithstanding that person never has control of drug and receives no remuneration or consideration. *Minor v. State*, 482 So. 2d 1107 (Miss. 1986).

Section 41-29-105, which prohibits possession of all species of cannabis plants, is neither vague nor overbroad. *Ervin v. State*, 431 So. 2d 130 (Miss. 1983).

Construing together the two subsections of this statute defining the terms "manufacture" and "production," it is apparent that the legislature prohibited the simple growing of marijuana; thus, in a prosecution for the manufacture of marijuana, the state is not required to show that the manufacture was by extraction, chemical synthesis or a combination thereof. *Boring v. State*, 365 So. 2d 960 (Miss. 1978), cert. denied, 442 U.S. 916, 99 S. Ct. 2835, 61 L. Ed. 2d 283 (1979).

Proof of the offense of "sale" of a controlled substance under the definition contained in Code 1972 § 41-29-105 (aa) requires a showing that a transfer or delivery for remuneration occurred, but does not require that there be a transfer from one person to another; the identity of a person to whom contraband is delivered is not essential to an indictment for a

"sale." *Jenkins v. State*, 308 So. 2d 95 (Miss. 1975).

Indictment charging that defendant "did deliver a controlled substance, to wit: Amphetamine" did not state an essential

to the crime of delivery of a controlled substance in that it failed to identify the person to whom the contraband was delivered. *Taylor v. State*, 295 So. 2d 735 (Miss. 1974).

RESEARCH REFERENCES

ALR. Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent

to distribute — state cases. 83 A.L.R.4th 629.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

Validity, under Federal Constitution, of so-called "head shop" ordinances or statutes, prohibiting manufacture and sale of drug use related paraphernalia. 69 A.L.R. Fed. 15.

Am Jur. 38 Am. Jur. Proof of Facts 2d 589, *Physician's Liability for Causing Patient's Drug Addiction*.

§ 41-29-107. Bureau of narcotics; composition; qualifications; dismissal.

(1) There is created within the Mississippi Department of Public Safety an office to be known as the Mississippi Bureau of Narcotics. The office shall have a director who shall be appointed by the Commissioner of Public Safety. The commissioner may assign to the appropriate offices of the department such powers and duties deemed appropriate to carry out the lawful functions of the Mississippi Bureau of Narcotics.

(2) The Commissioner of Public Safety is empowered to employ or appoint necessary agents. The commissioner may also employ such secretarial, clerical and administrative personnel, including a duly licensed attorney, as necessary for the operation of the bureau, and shall have such quarters, equipment and facilities as needed. The salary and qualifications of the attorney authorized by this section shall be fixed by the director, but the salary shall not exceed the salary authorized for an assistant attorney general who performs similar duties.

(3) The director and agents so appointed shall be citizens of the United States and of the State of Mississippi, and of good moral character. The agents shall be not less than twenty-one (21) years of age at the time of such appointment. In addition thereto, those appointed shall have satisfactorily completed at least two (2) years of college studies. However, two (2) years of satisfactory service as a law enforcement officer and the completion of the prescribed course of study at a school operated by the Bureau of Narcotics and Dangerous Drugs, United States Justice Department, shall satisfy one (1) year of such college studies, and four (4) years of satisfactory service as a law

enforcement officer and the completion of the prescribed course of study at such federal bureau school as stated heretofore shall fully satisfy the two (2) years of college requirement.

During the period of the first twelve (12) months after appointment, any employee of the bureau shall be subject to dismissal at the will of the director. After twelve (12) months' service, no employee of the bureau shall be subject to dismissal unless charges have been filed with the director, showing cause for dismissal of the employee of the bureau. A date shall be set for hearing before the director and the employee notified in writing of the date of such hearing and of the charges filed. The hearing shall be held not less than ten (10) days after notification to the employee. After the hearing, at which the employee shall be entitled to legal counsel, a written order of the director shall be necessary for dismissal and the decision shall be final. Any such order of the director shall be a public record and subject to inspection as such.

(4) The Commissioner of Public Safety may assign members of the Mississippi Highway Safety Patrol, regardless of age, to the bureau; however, when any highway patrolman or other employee, agent or official of the Mississippi Department of Public Safety is assigned to duty with, or is employed by, the bureau, he shall not be subject to assignment or transfer to any other office or department within the Mississippi Department of Public Safety except by the commissioner. Any highway patrolman assigned to duty with the bureau shall retain his status as a highway patrolman, but shall be under the supervision of the director. For purposes of seniority within the Highway Safety Patrol and for purposes of retirement under the Mississippi Highway Safety Patrol Retirement System, highway patrolmen assigned to the bureau will be credited as if performing duty with the Highway Safety Patrol. The commissioner may assign employees of the Highway Safety Patrol to the Mississippi Bureau of Narcotics and may assign agents of the bureau to the Highway Safety Patrol; however, any employees so assigned must meet all established requirements for the duties to which they are assigned.

(5) The Commissioner of Public Safety may enter into agreements with bureaus or departments of other states or of the United States for the exchange or temporary assignment of agents for special undercover assignments and for performance of specific duties.

(6) The Commissioner of Public Safety may assign agents of the bureau to such duty and to request and accept agents from such other bureaus or departments for such duty.

(7)(a) All funds, property and/or PINs belonging to the Mississippi Bureau of Narcotics are transferred to the Department of Public Safety on July 1, 2004. Any funds, property or PINs that are appropriated to or otherwise received by the bureau, or appropriated to, transferred to or otherwise received by the Department of Public Safety for the use of the bureau, shall be budgeted and maintained by the department as funds of the department. Personnel occupying PINs transferred from the bureau to the department shall serve on a probationary basis during the twelve (12) months after July 1, 2004.

(b) In transferring the responsibilities of the Mississippi Bureau of Narcotics to the Department of Public Safety, the commissioner and the director of the bureau shall develop and implement written security precautions that shall be observed by all affected employees. The commissioner and the director shall review, modify and approve the plan before the effective date of the merger of responsibilities of the bureau and the department.

SOURCES: Codes, 1942, § 6831-53; Laws, 1971, ch. 521, § 3; Laws, 1972, ch. 520, § 2; Laws, 1983, ch. 490; Laws, 1984, ch. 518, § 2; Laws, 2004, ch. 595, § 17; Laws, 2005, ch. 333, § 1, eff from and after July 1, 2005.

Editor's Note — Laws of 1972, ch. 520, § 1, provides as follows:

“SECTION 1. (a) The Mississippi Bureau of Drug Enforcement shall henceforth be designated as the Mississippi Bureau of Narcotics.

(b) The Mississippi Bureau of Drug Enforcement as created by Chapter 521, Section 3, Laws of 1971, being Section 6831-53, Mississippi Code of 1942, is hereby transferred from the state board of health to the Mississippi Department of Public Safety; all personnel, records, property, equipment and all funds allocated the bureau of drug enforcement are hereby transferred to and placed under the supervision of the bureau of narcotics of the department of public safety. Any funds transferred by this section and any funds appropriated to the bureau of narcotics shall be maintained in an account separate from any funds of the department of public safety or of funds to be appropriated for said department or any division or bureau of said department and shall never be commingled with any funds of said department.”

Laws of 1993, ch. 338, §§ 1, 2, effective July 1, 1993, provide as follows:

“SECTION 1. The Department of Finance and Administration is hereby authorized to transfer to the Bureau of Narcotics, Department of Public Safety, the land and building located in the Greater Jackson Industrial Park at 6090 I-55 South Frontage Road, Jackson, Mississippi, described more particularly as:

PARCEL 1.

Commence at the Southeast corner of the Northeast quarter of the Southeast quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence South 85 degrees 51 minutes West for a distance of 256.3 feet to the point of beginning of the property herein described. Run thence North 60 degrees 51 minutes West for a distance of 580.0 feet to a point on the East right-of-way line of Interstate Highway 55, as said right-of-way line exists this date; run thence North 29 degrees 07 minutes East along the said East right-of-way line for a distance of 64.8 feet to a point; run thence North 29 degrees 08 minutes 30 seconds East and parallel to said East right-of-way line for a distance of 435.2 feet to a point; run thence South 60 degrees 51 minutes East for a distance of 580.0 feet to a point; run thence South 29 degrees 08 minutes 30 seconds West for a distance of 500.0 feet to a point of beginning. The herein described property lying and being situated in the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter of the Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 6.658 acres, more or less.

PARCEL 2.

Commence at the Southeast corner of the Northeast quarter of the Southeast quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence South 85 degrees 51 minutes West for a distance of 256.30 feet to the Southeast corner of that certain parcel of land conveyed to Hawera Tool Manufacturing Company by a deed recorded in Deed Book 2554 at page 722 thereof in the office

of the Chancery Clerk of Hinds County at Jackson, Mississippi; run thence North 60 degrees 51 minutes West along the South line of the said Hawera Tool Manufacturing Company property for a distance of 580.0 feet to the Southwest corner of said property, said point being located on the East right-of-way line of Interstate Highway 55, as said highway exists this date; run thence North 29 degrees 07 minutes East along the said East right-of-way line for a distance of 64.80 feet to the point of beginning of the herein described property. Run thence North 60 degrees 51 minutes 30 seconds West along the said East right-of-way line for a distance of 20.0 feet to a point; run thence North 29 degrees 08 minutes 30 seconds East along the said East right-of-way line for a distance of 435.2 feet to a point; thus leaving the said East right-of-way line, run thence South 60 degrees 51 minutes East for a distance of 20.0 feet to the Northwest corner of the aforesaid Hawera Tool Manufacturing Company property; run thence South 29 degrees 08 minutes 30 seconds West along the West line of the said Hawera Tool Manufacturing Company property for a distance of 435.2 feet to the point of beginning. The herein described property lying and being situated in the Northeast Quarter of the Southeast Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 0.20 acres, more or less.

PARCEL 3.

Begin at the Southeast corner of the Northeast One-Quarter of the Southeast One-Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and from this point run thence North 00 degrees 08 minutes 54 seconds East along the East line of the said Northeast One-Quarter of the Southeast One-Quarter for a distance of 420.08 feet to a point; run thence North 89 degrees 51 minutes 06 seconds West for a distance of 9.20 feet to the Northeast corner of that parcel of property conveyed to Hawera Tool Manufacturing Company by a deed recorded in Deed Book 2554 at Page 722 thereof in the office of the Chancery Clerk of Hinds County at Jackson, Mississippi; run thence South 29 degrees 46 minutes 40 seconds West along the East line of the said Hawera Tool Manufacturing Company property for a distance of 500.00 feet to the Southeast corner thereof; run thence North 86 degrees 54 minutes 10 seconds East for a distance of 256.81 feet to the point of beginning. The herein described property lying and being situated in the East One-Half of the Southeast One-Quarter of Section 23, Township 4 North, Range 1 West, Hinds County, Mississippi, and containing 1.282 acres, more or less."

"SECTION 2. The Bureau of Narcotics shall assume all supervision, management, maintenance and control of the property described in Section 1."

Laws of 2004, ch. 595, § 21 provides:

"Section 1, Chapter 520, Laws of 1972, which provides that funds appropriated to the Bureau of Narcotics shall be kept separate from the funds of the Department of Public Safety, is repealed."

JUDICIAL DECISIONS

1. In general.

There was no showing of a pattern of unconstitutionally discriminatory hiring practices by the Bureau of Narcotics where, though a relatively small percentage of employees were minorities, the bureau had engaged in extensive minority recruitment, and where, though there was

a relatively high education requirement of two years of college or the equivalent, such requirement was justified by the highly specialized nature of the work. *Morrow v. Dillard*, 412 F. Supp. 494 (S.D. Miss. 1976), rev'd on other grounds, 580 F.2d 1284 (5th Cir. 1978).

ATTORNEY GENERAL OPINIONS

Mississippi Highway Safety Patrol officers assigned to duty with the Bureau of Narcotics retain their status as Safety Patrol employees. Jones, March 13, 1998, A.G. Op. #98-0111.

The salary of the director of the Bureau of Narcotics may not be waived; however, the director may donate the salary back to the agency subject to mandatory deductions. Stringer, Jan. 3, 2003, A.G. Op. #02-0751.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 189 et seq.

CJS. 72 C.J.S., Poisons §§ 8, 9.

§ 41-29-108. Vehicles for use of bureau; liability insurance.

(1) The Commissioner of Public Safety is authorized to accept vehicles which may be available from the federal government for use in enforcement of this article. The commissioner is further authorized to expend reasonable funds from any funds appropriated for the bureau for the delivery, repair and maintenance of such automobiles.

(2) The commissioner is further authorized to rent or lease motor vehicles for undercover missions. Such vehicles shall be used only on specified missions and not as additions to the regularly authorized and budgeted vehicles of the bureau.

SOURCES: Codes, 1942, § 6831-92; Laws, 1972, ch. 520, § 18; Laws, 1984, ch. 495, § 17; reenacted and amended, Laws, 1985, ch. 474, § 14; Laws, 1986, ch. 438, § 26; Laws, 1987, ch. 483, § 27; Laws, 1988, ch. 442, § 24; Laws, 1989, ch. 537, § 23; Laws, 1990, ch. 518, § 24; Laws, 1991, ch. 618, § 23; Laws, 1992, ch. 491, § 24; Laws, 2004, ch. 595, § 18, eff from and after July 1, 2004.

Cross References — Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Motor Vehicle Safety Responsibility Law, see §§ 63-15-1 et seq.

§ 41-29-109. Cooperation with bureau of narcotics.

The Mississippi Bureau of Narcotics shall have the full cooperation and use of facilities and personnel of the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Optometry, the district and county attorneys, and of the Attorney General's office.

It shall be the duty of all duly sworn peace officers of the State of Mississippi to enforce the provisions of this article with reference to illicit narcotic and drug traffic. The provisions of this article may likewise be enforced by agents of the United States Drug Enforcement Administration.

SOURCES: Codes, 1942, § 6831-54; Laws, 1971, ch. 521, § 4; Laws, 1972, ch. 520, § 3; Laws, 1981, ch. 502, § 13; Laws, 1983, ch. 488, § 35; Laws, 2001, ch. 470, § 1; Laws, 2005, ch. 404, § 6, eff from and after July 1, 2005.

Cross References — Office of Attorney General, generally, see §§ 7-5-1 et seq.

County attorneys, generally, see §§ 19-23-1 et seq.

District attorneys, generally, see §§ 25-31-1 et seq.

Bureau of Narcotics Work Program, see § 41-29-110.

Cooperative arrangements with federal and other state agencies, see § 41-29-167.

Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

State board of dental examiners, generally, see §§ 73-9-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

§ 41-29-110. Bureau of narcotics work program.

The Mississippi Bureau of Narcotics is hereby authorized and empowered to request and to accept the use of persons convicted of an offense, whether a felony or a misdemeanor, for work in support of the bureau. The bureau is authorized to enter into any agreements with the Department of Corrections, the State Parole Board, any criminal court of this state, and any other proper official regarding the working, guarding, safekeeping, clothing and subsistence of such persons performing work for the Mississippi Bureau of Narcotics. Such persons shall not be deemed agents, employees or involuntary servants of the bureau while performing such work or while going to and from work or other specified areas.

SOURCES: Laws, 1988, ch. 504, § 27, eff from and after passage (approved May 6, 1988).

Cross References — Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

§ 41-29-111. Powers and duties of bureau; regulation of substances.

(1) The Commissioner of Public Safety shall administer this article and shall work in conjunction and cooperation with the State Board of Pharmacy, county and municipal law enforcement agencies, the district and county attorneys, the Office of the Attorney General and the Mississippi Bureau of Narcotics. The State Board of Health shall work with the bureau in an advisory capacity and shall be responsible for recommending to the Legislature the appropriate schedule for all substances to be scheduled or rescheduled in Sections 41-29-113 through 41-29-121. In making a recommendation regarding a substance, the State Board of Health shall consider the following:

- (a)(i) The actual or relative potential for abuse;
- (ii) The scientific evidence of its pharmacological effect, if known;
- (iii) The state of current scientific knowledge regarding the substance;
- (iv) The history and current pattern of abuse;
- (v) The scope, duration and significance of abuse;
- (vi) The risk to the public health;

(vii) The potential of the substance to produce psychic or physiological dependence liability; and

(viii) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in paragraph (a), the State Board of Health shall make findings with respect thereto and issue a recommendation to control the substance if it finds the substance has a potential for abuse.

(c) If the State Board of Health designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be recommended for control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, it shall recommend the control of the substance under this article at the next session of the Legislature.

(e)(i) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in the Local Option Alcoholic Beverage Control Law, being Sections 67-1-1 through 67-1-91, and the Tobacco Tax Law of 1934, being Sections 27-69-1 through 27-69-77. It is the intent of the Legislature of the State of Mississippi that the bureau shall concentrate its efforts and resources on the enforcement of the Uniform Controlled Substances Law with respect to illicit narcotic and drug traffic in the state.

(ii) The controlled substances listed in the schedules in Sections 41-29-113 through 41-29-121 are included by whatever official, common, usual, chemical or trade name designated.

(f) The State Board of Health shall recommend the exclusion of any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription.

SOURCES: Codes, 1942, § 6831-55; Laws, 1971, ch. 521, § 5; Laws, 1972, ch. 520, § 4; Laws, 1983, ch. 522, § 13; Laws, 2004, ch. 595, § 19; Laws, 2009, ch. 469, § 3, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, substituted “Mississippi Bureau of Narcotics” for “Mississippi Highway Safety Patrol” in the first sentence of (1); and substituted “State Board of Health” for “the board” throughout.

Cross References — Distribution of the Code of 1972, see § 1-1-11.

Office of Attorney General, generally, see §§ 7-5-1 et seq.

County attorneys, generally, see §§ 19-23-1 et seq.

District attorneys, generally, see §§ 25-31-1 et seq.

State board of health, generally, see §§ 41-3-1 et seq.

Exclusion of certain isomer and salts from definition of “opiate,” unless designated as controlled under authority of this section, see § 41-29-105(t).

Bureau of Narcotics Work Program, see § 41-29-110.

Revision and republication of schedules, see § 41-29-123.

Authority of the commissioner of corrections to authorize the working and housing of offenders in support of the Bureau of Narcotics, see § 47-5-133.

JUDICIAL DECISIONS

1. In general.

Under the Uniform Controlled Substances Law, the penalties prescribed for violations thereof are inextricably tied to the various schedules, and therefore the portions of Code 1972, § 41-29-111 by which the state board of health is given the authority to move a substance from one schedule to another, to add substances to any schedule, and to delete substances

from any schedule are an unconstitutional attempt to delegate the authority to define crimes and fix the punishment therefor which is vested exclusively in the legislature; such unconstitutional portions are separable from the remaining provisions of the Uniform Controlled Substances Law. *Howell v. State*, 300 So. 2d 774 (Miss. 1974).

RESEARCH REFERENCES

ALR. Validity of delegation to Drug Enforcement Administration of authority to schedule or reschedule drugs subject to Controlled Substances Act (21 USCS §§ 801 et seq). 47 A.L.R. Fed. 869.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19-23, 47.

§ 41-29-112. Special contract agents or investigators.

(1) The director of the bureau of narcotics is authorized to retain on a contractual basis such persons as he shall deem necessary to detect and apprehend violators of the criminal statutes pertaining to the possession, sale or use of narcotics or other dangerous drugs.

(2) Those persons contracting with the director of the bureau of narcotics, pursuant to subsection (1), shall be known as, and are hereinafter referred to as, "special contract agents."

(3) The investigative services provided for in this section shall be designed to support local law enforcement efforts.

(4) Special contract investigators shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the director of the bureau of narcotics.

(5) No person shall be a special contract investigator unless he is at least eighteen (18) years of age.

(6) The director of the bureau of narcotics shall conduct a background investigation of all potential special contract investigators. If the background investigation discloses a criminal record, the applicant shall not be retained without the express approval of the director of the bureau of narcotics. Any matters pertaining to special contract investigators shall be exempt from the provisions of a law relating to meetings open to the public, approved as now or hereafter amended.

(7) Any contract pursuant to subsection (1) shall be:

(a) Reduced to writing; and

(b) Terminable upon written notice by either party, and shall in any event terminate one (1) year from the date of signing; and

(c) Approved as to form by the attorney general.

Such contracts shall not be public records and shall not be available for inspection under the provisions of a law providing for the inspection of public records as now or hereafter amended.

(8) Special contract investigators shall not be considered employees of the bureau of narcotics for any purpose.

(9) The director of the bureau of narcotics shall have all powers necessary and incidental to the effective operation of this section.

(10) Notwithstanding any other provisions contained in this section, all said contracts and related matters shall be made available to the legislative budget office and the state fiscal management board.

SOURCES: Laws, 1974, ch. 414; Laws, 1984, ch. 488, § 208, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Joint Legislative Budget Committee and Legislative Budget Office, generally, see §§ 27-103-101 et seq.

State fiscal management board, see §§ 27-104-1 et seq.

Penalty for impersonating an agent of the bureau of narcotics, see § 41-29-159.

§ 41-29-113. Schedule I of controlled substances.

The controlled substances listed in this section are included in Schedule I.

SCHEDULE I

(a) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl;
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol, except levo-alpha-acetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl;
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl;
- (12) Beta-hydroxy-3-methylfentanyl;
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;

- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacetylmorphan;
- (34) 3-methylfentanyl;
- (35) 3-methylthiofentanyl;
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl;
- (43) PEPAP (1-(-2-phenylethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl;
- (54) Tilidine;
- (55) Trimeperidine.

(b) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;

- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine; (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine;
- (24) Thebacon.

(c) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, optical isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, optical isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (4) 2,5-dimethoxy-4(n) propylthiophenethylamine (2C-T-7);
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) 3,4,5-trimethoxy amphetamine;
- (7) Alpha-methyltryptamine (Also known as AMT);
- (8) Bufotenine;
- (9) Diethyltryptamine;
- (10) Dimethyltryptamine;
- (11) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- (12) Alpha-ethyltryptamine;
- (13) 4-methyl-2,5-dimethoxyamphetamine;
- (14) Hashish;
- (15) Ibogaine;
- (16) Lysergic acid diethylamide; (LSD)
- (17) Marihuana;
- (18) Mescaline;
- (19) Peyote;

- (20) N-ethyl-3-piperidyl benzilate;
- (21) N-methyl-3-piperidyl benzilate;
- (22) Phencyclidine;
- (23) Psilocybin;
- (24) Psilocyn;

(25) Tetrahydrocannabinols (meaning tetrahydrocannabinols contained in a plant of the genus *Cannabis* (cannabis plant), as well as the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following: -1 cis or trans tetrahydrocannabinol, and their optical isomers; -6 cis or trans tetrahydrocannabinol, and their optical isomers; -3,4 cis or trans tetrahydrocannabinol, and their optical isomers.) (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions are covered.) ("Tetrahydrocannabinols" excludes dronabinol and nabilone.) However, the following products are exempted from control: THC-containing industrial products (e.g., (i) paper, rope and clothing made from cannabis stalks; (ii) processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope; (iii) animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption; and (iv) personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (provided that such products do not cause THC to enter the human body.)

- (26) 2,5-dimethoxyamphetamine;
- (27) 4-bromo-2,5-dimethoxyamphetamine;
- (28) 4-bromo-2,5-dimethoxyphenylethylamine;
- (29) 4-methoxyamphetamine;
- (30) Ethylamine analog of phencyclidine (PCE);
- (31) Pyrrolidine analog of phencyclidine (PHP, PCPy);
- (32) Thiophene analog of phencyclidine;
- (33) Parahexyl;
- (34) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(35) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenylethylamine, N-ethyl MDA, MDE, MDEA);

(36) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylethylamine);

- (37) *Salvia divinorum*.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the

central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone;

(3) Methaqualone.

(e) Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

(1) Aminorex;

(2) N-benzylpiperazine (also known as BZP; 1-benzylpiperazine);

(3) Cathinone;

(4) Fenethylline;

(5) N-ethyl-amphetamine;

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);

(7) Methcathinone.

(8) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine, and N,N-alphatrimethylphenethylamine).

SOURCES: Codes, 1942, § 6831-57; Laws, 1971, ch. 521, § 7; Laws, 1974, ch. 415, § 2; Laws, 1975, ch. 465, § 1; Laws, 1977, ch. 391, § 1; Laws, 1978, ch. 404, § 1; Laws, 1979, ch. 368, § 1; Laws, 1981, ch. 502, § 2; Laws, 1982, ch. 402, § 1; Laws, 1983, ch. 404, § 1; Laws, 1985, ch. 308, § 1; Laws, 1986, ch. 512, § 1; Laws, 1987, ch. 475, § 1; Laws, 1988, ch. 319, § 1; Laws, 1989, ch. 568, § 1; Laws, 1995, ch. 443, § 1; Laws, 2001, ch. 491, § 1; Laws, 2008, ch. 491, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment rewrote the section to revise Schedule I in conformity with federal law.

Cross References — Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Recommendations to Legislature as to appropriate substances to be scheduled under §§ 41-29-113 through 41-29-121, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of order forms for distribution, see § 41-29-135.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Forfeiture of controlled substances and plants from which they are derived, see § 41-29-153.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

1. In general.
2. Sentence.

1. In general.

Defendant's conviction of conspiracy to possess heroin was sustained by evidence showing that she had traveled 2,000 miles from San Diego, California to Jackson, Mississippi with codefendant, that a telephone call to her parents' home notified co-defendant of the arrival of the heroin, that she waited in the car while co-defendant picked up heroin, and that her purse contained a substance used as cutting agent for heroin. *Davis v. State*, 485 So. 2d 1055 (Miss. 1986).

Tetrahydrocannabinol (THC) is a controlled substance under § 41-29-113. *Ervin v. State*, 431 So. 2d 130 (Miss. 1983).

2. Sentence.

Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. *White v. State*, 921 So. 2d 402 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR. Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 8, 34 et seq.

CJS. 72 C.J.S., Poisons §§ 2-4.

§ 41-29-115. Schedule II of controlled substances.

(A) The controlled substances listed in this section are included in Schedule II.

SCHEDULE II

(a) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone hydrochloride, apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene and naltrexone, but including the following:

- (i) Codeine;
- (ii) Dihydroetorphine;
- (iii) Ethylmorphine;
- (iv) Etorphine hydrochloride;
- (v) Granulated opium;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Metopon;
- (ix) Morphine;

- (x) Opium extracts;
- (xi) Opium fluid extracts;
- (xii) Oripavine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Powdered opium;
- (xvi) Raw opium;
- (xvii) Thebaine;
- (xviii) Tincture of opium.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

- (3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of cocaine or coca leaves, including cocaine and ecgonine and any salt, compound, derivative, isomer, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specified chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

- (17) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Phenmetrazine and its salts;
- (3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (4) Methylphenidate and its salts;
- (5) Lisdexamfetamine, its salts, isomers and salts of isomers.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;
- (4) Amphetamine and methamphetamine immediate precursor: Phenylacetone (phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone);
- (5) Phencyclidine immediate precursors:
 - (i) 1-phenylcyclohexylamine;
 - (ii) 1-piperidinocyclohexanecarbonitrile (PCC);
- (6) Pentazocine and its salts in injectable dosage form;
- (7) Nabilone, other names include: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one;
- (8) Glutethimide.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule II controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.24 or 1308.32, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942 § 5831-58; Laws, 1971, ch. 521, § 8; Laws, 1975, ch. 465, § 2; Laws, 1978, ch. 404, § 2; Laws, 1979, ch. 368, § 2; Laws, 1981, ch. 502, § 3; Laws, 1982, ch. 402, § 2; Laws, 1983, ch. 404, § 2; Laws, 1985, ch. 308, § 2; Laws, 1987, ch. 475, § 2; Laws, 1988, ch. 319, § 2; Laws, 1989, ch. 568, § 2; Laws, 1995, ch. 443, § 2; Laws, 2000, ch. 427, § 1; Laws, 2008, ch. 491, § 2; Laws, 2009, ch. 402, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2008 amendment rewrote the section to revise Schedule II in conformity with federal law.

The 2009 amendment added (A)(a)(1)(xii) and placed the remainder of the substances in alphabetical order.

Cross References — Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of order forms for distribution, see § 41-29-135.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Forfeiture of controlled substances and plants from which they are derived, see § 41-29-153.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

1. Indictment.
2. Separate incidents; double jeopardy.
3. Evidence — generally; admissibility.
4. — Sufficiency.
5. Sentencing.
6. Post-conviction proceedings.

1. Indictment.

In a prosecution for the unlawful sale of cocaine, the indictment charging the defendant with selling cocaine was sufficient since cocaine is a well known derivative of coca leaves and coca leaves are included as a controlled substance in Schedule II. *Coleman v. State*, 388 So. 2d 157 (Miss. 1980).

In a prosecution for unlawful possession of a controlled substance described as preludein, the omission of a recital in the indictment that preludein contained phenmetrazine was an omission of substance, so that the trial court was without power under Code 1972 § 99-7-21 to allow the state to amend the indictment to correct the omission, notwithstanding defendant's failure to demur or otherwise challenge the sufficiency of the indictment; in order to make out a prima facie case under

the indictment, it was necessary for the state to prove extrinsic facts showing that preludein contained phenmetrazine, a controlled substance under Code 1972 § 41-29-115, since preludein itself is not designated as a controlled substance. *Brewer v. State*, 351 So. 2d 535 (Miss. 1977).

2. Separate incidents; double jeopardy.

Separate prosecutions for sales of illegal controlled substances, arising from incidents occurring one week apart from each other, do not violate double jeopardy even where same undercover agent has induced sales at same general location using same modus operandi. *Barnette v. State*, 478 So. 2d 800 (Miss. 1985).

3. Evidence — generally; admissibility.

Where the evidence showed that drugs and paraphernalia were found in a ditch where a car had been located after an accident, it was reasonable to infer that the drugs were connected to the car and that someone had thrown them out; the jury was entitled to reject defendant's story that the drugs found in the ditch

belonged to someone else. *Jones v. State*, 877 So. 2d 562 (Miss. Ct. App. 2004).

In a prosecution for the unlawful manufacture of methamphetamine, the court properly permitted the introduction into evidence of an envelope on which the words "ephedrine hydrochloride," "methamphetamine 65%," and "ritalin" were written to show that the defendant knew that boiling Vicks Inhaler would produce a controlled form of methamphetamine. *Crosswhite v. State*, 732 So. 2d 856 (Miss. 1998).

An additional quantity of a substance retained by the defendant after she sold cocaine to a confidential informant could not be used to support a conviction for possession of cocaine with intent to distribute, where there was no chemical analysis adequate to show that the substance retained was an illegal controlled substance. *Clayton v. State*, 582 So. 2d 1019 (Miss. 1991).

In a prosecution for sale of cocaine, photographs of the cocaine were properly allowed into evidence, where the cocaine was entirely consumed in the crime lab's chemical analysis, the prosecution properly qualified the photographs as depicting the substance purchased from the defendant, and there was no suggestion or inference in the record that the original substance was destroyed in bad faith. *Gibson v. State*, 580 So. 2d 739 (Miss. 1991).

Admission into evidence, over defense objections, of several contraband substances not mentioned in indictment charging defendant with possession of meperidine was reversible error, where such introduction was not necessary to show identity, intent or motive, and was not so interwoven with the offense charged that it could not be separated. *Bolin v. State*, 489 So. 2d 1091 (Miss. 1986).

In context of drug case, state may introduce proof regarding nature of drug, manner in which it is used, effect it has upon individual who uses it and related matters; accordingly, state's evidence that Pentazocine, controlled substance, is customarily used with Tripeleennamine, non-controlled substance, in set of one tablet each to produce heroin like effect and that defendant charged with sale of Pentazo-

cine sold 5 sets to narcotics agent is admissible in prosecution under controlled substances law. *Turner v. State*, 478 So. 2d 300 (Miss. 1985).

4. —Sufficiency.

Trial court did not err in denying defendant's motion for a new trial or for judgment notwithstanding the verdict because there was sufficient evidence to support his convictions for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute under Miss. Code Ann. § 41-29-115 and Miss. Code Ann. § 41-29-152; defendant admitted to the undercover officer that he had drug paraphernalia in his home and the officers found a .380 loaded handgun, a police scanner, foil, and scales along with drugs during a search of defendant's home, which were relevant factors to be considered by the jury when deciding if defendant was involved in the distribution of drugs. *Passman v. State*, 937 So. 2d 17 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

By proving that the pills defendant transferred were Oxycodone, the State proved that she transferred a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) (2001), because, Oxycodone was in fact a Schedule II controlled substance under Schedule II, Miss. Code Ann. § 41-29-115 (A)(a)(1)(xiv) (2001), and the designation of Oxycodone as a controlled substance was not a question of fact for the jury. *Lawrence v. State*, 928 So. 2d 894 (Miss. Ct. App. 2005).

In a prosecution under Miss. Code Ann. § 97-3-47, where defendant admitted giving the victim two oxycodone pills (for which he had a prescription) and finding her unconscious the next morning; the victim's brother testified that he saw defendant attempt to inject the victim with the drug, that she later appeared intoxicated, became ill, and vomited; a pathologist testified that the oxycodone level in the victim's blood was about 5½ times higher than the toxic level of oxycodone; and delivery of oxycodone, a Schedule II controlled substance, was itself a crime, the evidence sufficiently proved that the defendant was guilty of manslaughter by culpable negligence. *Nichols v. State*, 868

So. 2d 355 (Miss. Ct. App. 2003), cert. denied, 868 So. 2d 345 (Miss. 2004).

The act of boiling Vicks Inhalers constitutes the illegal manufacture of a Schedule II controlled substance, notwithstanding that both the "Vicks Inhaler" and "l-desoxyephedrine" are specifically descheduled by 21 C.F.R. § 1308.22. *Crosswhite v. State*, 732 So. 2d 856 (Miss. 1998).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a "controlled substance," even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

In a prosecution for distribution of crystal methamphetamine, there was sufficient proof as to the type of schedule controlled substance crystal methamphetamine was, where a crime lab expert testified that the substance contained amphetamine and methamphetamine, since methamphetamine is listed as a controlled substance under § 41-29-115(a), (c)(3). *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

The evidence was sufficient to support a conviction for sale of cocaine where the case for the prosecution consisted of the testimony of an undercover agent who purchased cocaine from the defendant, a surveillance sergeant and a forensic chemist. *Doby v. State*, 557 So. 2d 533 (Miss. 1990).

When 2 representatives of law enforcement, neither of them impeached or hostile to state, give certain, unequivocal eye witness testimony which is absolutely impossible to reconcile and only possible conclusion rational jury can reach from testimony is that drug samples at issue in prosecution for sale of controlled substance have been mixed up in some manner at laboratory, or that required drug test has not been made, directed verdict in favor of defendant is proper. *Tyler v. State*, 478 So. 2d 315 (Miss. 1985).

5. Sentencing.

Where appellant was convicted of the unlawful sale of cocaine, a Schedule II controlled substance under Miss. Code Ann. § 41-29-115(A)(a)(4), the trial court imposed a thirty-year sentence pursuant to Miss. Code Ann. § 41-29-139(b)(1). No first-time offender exception was available; the sentence was not excessive. *Alexander v. State*, 979 So. 2d 716 (Miss. Ct. App. 2007).

6. Post-conviction proceedings.

Petition for post-conviction relief was denied because there was no Eighth Amendment violation based on a 14-year sentence given for a violation of Miss. Code Ann. § 41-29-139 where the maximum sentence was 30 years; there was no inferences of a grossly disproportionate sentence when defendant's sentence was compared to the crime that he committed, and the factors in *Solem v. Helm*, 463 U.S. 277 (1983), were not considered because no evidence was presented to require such. *Moody v. State*, 964 So. 2d 564 (Miss. Ct. App. 2007).

Defendant who pleaded guilty to possession of cocaine was properly sentenced to 20 years in the Mississippi Department of Corrections. The circuit court denied defendant's motion for postconviction relief without a hearing because the record showed that his guilty plea was knowing and voluntary. *Graves v. State*, 872 So. 2d 760 (Miss. Ct. App. 2004).

Appellant sentenced to 30 years in custody upon his plea of guilty to the sale of cocaine was not entitled to post-conviction relief; the sentence was within the appropriate range, and there was a factual basis to support appellant's plea and it was voluntarily made. *Vaughn v. State*, 942 So. 2d 291 (Miss. Ct. App. 2006).

Where defendant's testimony was sworn under oath and the trial judge methodically and carefully explained the possible sentences, defendant had the ability to understand the nature and consequences of his guilty plea and it was entered voluntarily and intelligently. *Avery v. State*, 835 So. 2d 125 (Miss. Ct. App. 2003).

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and

41-29-119, the record failed affirmatively to establish denial of defendants' right to effective assistance of counsel; nevertheless, affirmance of the judgment of conviction would not preclude defendants from litigating the issue via proper postconviction proceedings. *Read v. State*, 430 So. 2d 832 (Miss. 1983).

tion would not preclude defendants from litigating the issue via proper postconviction proceedings. *Read v. State*, 430 So. 2d 832 (Miss. 1983).

RESEARCH REFERENCES

ALR. Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 8, 34 et seq.

CJS. 72 C.J.S., Poisons §§ 2-4.

§ 41-29-117. Schedule III of controlled substances.

(A) The controlled substances listed in this section are included in Schedule III.

SCHEDULE III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances or their salts, isomers, or salts of isomers, of the following substances:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine;
- (4) Phendimetrazine.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules.

(2) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing any of the following substances or any salt of the substances specifically included in this subsection (2) and one or more other active medicinal ingredients which are not listed in any other schedule:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital.

(3) Any suppository dosage form containing any of the following substances or any salt of any of the substances specifically included in this subsection (3) approved by the Food and Drug Administration for marketing only as a suppository:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital.

(4) Chlorhexadol;

(5) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methypylon;
- (9) Sulfondiethylmethane;
- (10) Sulfonethylmethane;
- (11) Sulfonmethane;

(12) Tiletamine and zolazepam or any salt thereof; other names for the tiletamine and zolazepam combination product include: telazol; other names for tiletamine include: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam include: 4-(2-fluorophenyl)-6,8-dihydro 1,3,8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrzapon;

(13) Embutramide.

(c) Nalorphine.

(d) Ketamine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than three hundred (300) milligrams of dihydrocodeine (also known as hydrocodone), or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than three hundred (300) milligrams of dihydrocodeine (also known as hydrocodone), or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than one and eight-tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one

or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Any material, compound, mixture or preparation containing any quantity of any of the following anabolic steroids, which means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids and dehydroepiandrosterone) that promotes muscle growth, unless listed in another schedule or excepted:

- (1) 3beta,17-dihydroxy-5a-androstane;
- (2) 3alpha,17beta-dihydroxy-5a-androstane;
- (3) 5alpha-androstan-3,17-dione;
- (4) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
- (5) 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
- (6) 4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);
- (7) 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
- (8) 1-androstenedione ([5alpha]-androst-1-en-3, 17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- (12) Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
- (13) Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- (14) Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
- (15) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4-dien-3-one);
- (16) Delta1-dihydrotestosterone (also known as 1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);
- (17) 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- (18) Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- (19) Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
- (20) Fluoxymesterone (9-fluoro-17alpha-methyl-11beta,17beta-dihydroxyandrost-4-en-3-one);
- (21) Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1,4-di en-3-one);
- (22) Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);
- (23) 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;
- (24) 4-hydroxytestosterone (4,17beta-dihydroxyandrost-4-en-3-one);
- (25) 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
- (26) Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

- (27) Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
- (28) Methandienone (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);
- (29) Methandriol (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);
- (30) Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- (31) 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
- (32) 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
- (33) 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
- (34) 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- (35) Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
- (36) Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);
- (37) Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- (38) Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- (39) 17alpha-methyl-Delta1-dihydrotestosterone (17b beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as 17-alpha-methyl-1-testosterone);
- (40) Nandrolone (17beta-hydroxyestr-4-en-3-one);
- (41) 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- (42) 19-nor-4-androstenediol (3a,17beta-dihydroxyestr-4-ene);
- (43) 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- (44) 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);
- (45) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (46) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (47) Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
- (48) Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
- (49) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- (50) Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
- (51) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);
- (52) Oxymesterone (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);
- (53) Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androstan-3-one);
- (54) Stanozolol (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3,2-c]-pyrazole);

(55) Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

(56) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(57) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(58) Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

(59) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

(60) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph;

(61) Any salt, ester or ether of a drug or substance described or listed in this paragraph.

(g) Any material, compound, mixture or preparation which contains any quantity of buprenorphine or its salts.

(h) Any material, compound, mixture or preparation which contains any quantity of pentazocine or its salts in oral dosage form.

(i) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule III controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-59; Laws, 1971, ch. 521, § 9; Laws, 1975, ch. 465, § 3; Laws, 1977, ch. 391, § 3; Laws, 1978, ch. 404, § 3; Laws, 1982, ch. 402, § 3; Laws, 1983, ch. 404, § 3; Laws, 1988, ch. 319, § 3; Laws, 1989, ch. 568, § 3; Laws, 1995, ch. 443, § 3; Laws, 2000, ch. 427, § 2; Laws, 2001, ch. 491, § 2; Laws, 2006, ch. 416, § 1; Laws, 2008, ch. 491, § 3, eff from and after July 1, 2008.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section, as amended by Laws of 2000, ch. 427, § 2. The amendment, in (A), had inserted a new paragraph (d), redesignated former (d) as (e), and added a new (g); however, ch. 427 did not redesignate (e) and (f). Former (e) and (f) have been redesignated as (f) and (g), and newly added (g) has been redesignated as (h). The Committee ratified the correction at its September 18, 2000, meeting.

Amendment Notes — The 2008 amendment rewrote the section to revise Schedule III in conformity with federal law.

Cross References — Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

Federal Aspects — Section 505 of the Federal Food, Drug and Cosmetic Act appears as 21 USCS § 355.

JUDICIAL DECISIONS

1. In general.

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and 41-29-119, the record failed affirmatively to establish denial of defendants' right to

effective assistance of counsel; nevertheless, affirmance of the judgment of conviction would not preclude defendants from litigating the issue via proper postconviction proceedings. *Read v. State*, 430 So. 2d 832 (Miss. 1983).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 8, 34 et seq.

29 Am. Jur. Proof of Facts 2d 199, Barbiturate Poisoning.

29 Am. Jur. Proof of Facts 2d 223, Unintentional Barbiturate Overdose.

CJS. 72 C.J.S., Poisons §§ 2-4.

§ 41-29-119. Schedule IV of controlled substances.

(A) The controlled substances listed in this section are included in Schedule IV.

SCHEDULE IV

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene, including its salts (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N, etc.).

(b) Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Butorphanol;

(5) Camazepam;

(6) Chloral betaine;

(7) Chloral hydrate;

(8) Chlordiazepoxide and its salts, but does not include chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and esterified estrogens;

- (9) Clobazam;
 - (10) Clonazepam;
 - (11) Clorazepate;
 - (12) Clotiazepam;
 - (13) Cloxazolam;
 - (14) Delorazepam;
 - (15) Diazepam;
 - (16) Dichloralphenazone;
 - (17) Estazolam;
 - (18) Ethchlorvynol;
 - (19) Ethinamate;
 - (20) Ethyl loflazepate;
 - (21) Fludiazepam;
 - (22) Flunitrazepam;
 - (23) Flurazepam;
 - (24) Halazepam;
 - (25) Haloxazolam;
 - (26) Ketazolam;
 - (27) Loprazolam;
 - (28) Lorazepam;
 - (29) Lormetazepam;
 - (30) Mazindol;
 - (31) Mebutamate;
 - (32) Medazepam;
 - (33) Meprobamate;
 - (34) Methohexital;
 - (35) Methylphenobarbital;
 - (36) Midazolam;
 - (37) Nimetazepam;
 - (38) Nitrazepam;
 - (39) Nordiazepam;
 - (40) Oxazepam;
 - (41) Oxazolam;
 - (42) Paraldehyde;
 - (43) Petrichloral;
 - (44) Phenobarbital;
 - (45) Pinazepam;
 - (46) Prazepam;
 - (47) Quazepam;
 - (48) Temazepam;
 - (49) Tetrazepam;
 - (50) Triazolam;
 - (51) Zaleplon;
 - (52) Zolpidem;
 - (53) Zopiclone.
- (c) Fenfluramine.

(d) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline (including any organometallic complexes and chelates thereof);
- (4) Pipradrol;
- (5) Sibutramine;
- (6) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) Cathine ((+/-) Norpseudophedrine);
- (2) Fencamfamin;
- (3) Fenproporex;
- (4) Mefenorex;
- (5) Modafinil.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule IV controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-60; Laws, 1971, ch. 521, § 10; Laws, 1975, ch. 465, § 4; Laws, 1977, ch. 391, § 4; Laws, 1978 ch. 404, § 4; Laws, 1979, ch. 368, § 3; Laws, 1981, ch. 502, § 4; Laws, 1982, ch. 402, § 5; Laws, 1983, ch. 404, § 4; Laws, 1986, ch. 512, § 2; Laws, 1987, ch. 475, § 3; Laws, 1989, ch. 568, § 4; Laws, 1995, ch. 443, § 4; Laws, 1998, ch. 328, § 1; Laws, 2000, ch. 427, § 3; Laws, 2001, ch. 491, § 3; Laws, 2006, ch. 416, § 2; Laws, 2008, ch. 491, § 4, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment revised Schedule IV by adding (b)(53), substituting “and chelates” for “or chelates” in (d)(3), and making a minor stylistic change.

Cross References — Board’s power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

JUDICIAL DECISIONS

1. In general.

In a prosecution for possession with intent to deliver a controlled substance, in violation of §§ 41-29-115, 41-29-117, and

41-29-119, the record failed affirmatively to establish denial of defendants’ right to effective assistance of counsel; nevertheless, affirmance of the judgment of convic-

tion would not preclude defendants from litigating the issue via proper postconviction proceedings. *Read v. State*, 430 So. 2d 832 (Miss. 1983).

RESEARCH REFERENCES

Am Jur. 25 *Am. Jur. 2d, Drugs and Controlled Substances* §§ 8, 34 et seq. **CJS.** 72 *C.J.S., Poisons* §§ 2-4.

§ 41-29-121. Schedule V of controlled substances.

(A) The controlled substances listed in this section are included in Schedule V:

SCHEDULE V

(a) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable, medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(b) Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their salts, isomers and salts of isomers:

(1) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid];

(2) Pyrovalerone.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment revised Schedule V by adding (b)(1).

Cross References — Board's power to add to, delete or reschedule substances listed in schedules of controlled substances, see § 41-29-111.

Exemption from registration for ultimate user or person in lawful possession of Schedule V substance as defined in this section, see § 41-29-125.

Registration of manufacturers and distributors, see § 41-29-127.

Requirement of prescriptions, see § 41-29-137.

Prohibited acts and penalties for violations thereof with respect to controlled substances scheduled in this section, see § 41-29-139.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Automatic control and listing of substances controlled under prior law but omitted from present schedules, see § 41-29-173(c).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 8, 34 et seq. **CJS.** 72 C.J.S., Poisons §§ 2-4.

§ 41-29-122. Exempt chemical preparations and mixtures.

Any material, compound, mixture or preparation which contains any quantity of a controlled substance and is listed as an exempt substance in 21 C.F.R., Section 1308.22, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Laws, 1977, ch. 391, § 5; Laws, 1978, ch. 404, § 6; Laws, 1983, ch. 404, § 6, eff from and after July 1, 1983.

§ 41-29-123. Revision and republication of schedules.

The board shall revise and republish the schedules set out in Sections 41-29-113 through 41-29-121 at least once every twelve months.

SOURCES: Codes, 1942, § 6831-62; Laws, 1971, ch. 521, § 12, eff from and after passage (approved April 16, 1971).

Cross References — Board's power to add to, delete, or reschedule substances enumerated in listed schedules, see § 41-29-111.

JUDICIAL DECISIONS

1. In general.

Under the Uniform Controlled Substances Law, the penalties prescribed for violations thereof are inextricably tied to the various schedules, and therefore § 41-29-111, to the extent the state board of health is given the authority to move a substance from one schedule to another, to add substances to any schedule, and to

delete substances from any schedule, is an unconstitutional attempt to delegate the authority to define crimes and fix the punishment therefor, which authority is vested exclusively in the legislature; such unconstitutional portions are severable from the remaining provisions of the Law. *Howell v. State*, 300 So. 2d 774 (Miss. 1974).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 8, 34 et seq.

§ 41-29-125. Rules and regulations relative to registration.

The State Board of Pharmacy may promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state, or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state, must obtain a registration issued by the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the Mississippi Board of Veterinary Medicine, as appropriate, in accordance with its rules and the law of this state. Such registration shall be obtained annually or biennially, as specified by the issuing board, and a reasonable fee may be charged by the issuing board for such registration.

(b) Persons registered by the State Board of Pharmacy, with the consent of the United States Drug Enforcement Administration and the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the Mississippi Board of Veterinary Medicine to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouse, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a valid prescription or in lawful possession of a Schedule V substance as defined in Section 41-29-121.

(d) The State Board of Pharmacy may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The State Board of Pharmacy, the Mississippi Bureau of Narcotics, the State Board of Medical Licensure, the State Board of Dental Examiners,

the Mississippi Board of Nursing and the Mississippi Board of Veterinary Medicine may inspect the establishment of a registrant or applicant for registration in accordance with the regulations of these agencies as approved by the board.

SOURCES: Codes, 1942, § 6831-63; Laws, 1971, ch. 521, § 13; Laws, 1983, ch. 488, § 36, ch. 522, § 14; Laws, 1984, ch. 354, § 2; Laws, 2001, ch. 470, § 2; Laws, 2009, ch. 469, § 4, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted references to “the Mississippi Board of Veterinary Medicine” in (a), (b) and (f); added “and the law of this state” at the end of the first sentence of (a); substituted “warehouse” for “warehouseman” in (c)(2); substituted “valid prescription” for “lawful order of a practitioner” in (c)(3); and made minor stylistic changes.

Cross References — State Board of Health, see § 41-3-1.

“Mississippi Bureau of Drug Enforcement” meaning the bureau of narcotics, see § 41-29-105(d).

Bureau of narcotics, see §§ 41-29-107 et seq.

Continuation of regulations promulgated under prior laws, see § 41-29-175.

State board of dental examiners, see § 73-9-7.

State board of veterinary medicine, see § 73-39-55.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 21-27, 58, 62. **CJS.** 28 C.J.S., Drugs and Narcotics §§ 187, 211-213, 227 et seq.

§ 41-29-127. Registration; factors considered.

(a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in Sections 41-29-113 through 41-29-121 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the state board of pharmacy shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant’s establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant’s federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V, as set out in Sections 41-29-115 through 41-29-121, if they are authorized to dispense or conduct research under the law of this state. The state board of pharmacy need not require separate registration under this section for practitioners engaging in research with nonnarcotic controlled substances in the said Schedules II through V where the registrant is already registered therein in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances, as set out in Section 41-29-113, may conduct research with Schedule I substances within this state upon furnishing the state board of health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

SOURCES: Codes, 1942, § 6831-64; Laws, 1971, ch. 521, § 14, eff from and after passage (approved April 16, 1971).

Cross References — Exemptions from registration, see § 41-29-125.

Licensing of physicians and other practitioners in administering, etc., narcotics, see §§ 41-29-301 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 62 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 21 (complaint, petition, or declaration — to restrain interference with production and distribution of medicine).

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 3-8 (licensing and regulation).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq. (judicial review of denial of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 32 (order-directing jury trial — on petition for review of administrative denial of license).

CJS. 28 C.J.S., Drugs and Narcotics §§ 227 et seq.

72 C.J.S., Poisons §§ 2-4.

§ 41-29-129. Revocation and suspension of registration.

(1) A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the State Board of Pharmacy upon a finding that the registrant:

(a) Has willfully furnished false or fraudulent material information in any application filed under this article;

(b) Has been convicted of a felony within the past five (5) years and has not been pardoned and his citizenship restored under any state or federal law relating to any controlled substance;

(c) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(d) Has violated or failed to comply with any duly promulgated regulation of the State Board of Pharmacy which reflects adversely on the registrant's reliability and integrity with respect to controlled substances;

(e) Has violated the Uniform Controlled Substances Law of the State of Mississippi;

(f) Has violated any duly promulgated rule or regulation of the State Board of Pharmacy pertaining to the manufacture, distribution, storage, possession, control or dispensing of controlled substances;

(g) Has been convicted of a violation relating to any substance defined in this article as a controlled substance;

(h) Has dispensed any controlled substance if the registrant knew the prescription was not valid under the provisions of this article.

(2) The State Board of Pharmacy may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) If the board or the State Board of Pharmacy suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state. All state professional or business licensing agencies shall promptly notify the bureau of all orders of suspensions or revocations which are the result of drug violations or drug-related matters.

(4) The bureau shall promptly notify the federal Drug Enforcement Administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

SOURCES: Codes, 1942, § 6831-65; Laws, 1971, ch. 521, § 15; Laws, 1972, ch. 520, § 6; Laws, 1977, ch. 377; Laws, 2009, ch. 469, § 5, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (1)(h); and substituted “Drug Enforcement Administration” for “bureau of narcotics and dangerous drugs” in (4).

Cross References — Necessity of order to show cause before denying, suspending, revoking, or refusing to renew, registration, see § 41-29-131.

Revocation or suspension of licenses of physicians and other practitioners for violation of narcotic drug regulations, see § 41-29-311.

RESEARCH REFERENCES

ALR. What constitutes conviction under § 304(a)(2) of the Controlled Substances Act (21 USCS § 824(a)(2)) which provides for revocation of registration to manufacture, distribute, or dispense controlled substances upon finding that registrant has been "convicted". 56 A.L.R. Fed. 909.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 72 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits. Forms 43-46, 48 (revocation or suspension).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement).

CJS. 28 C.J.S., Drugs and Narcotics §§ 228 et seq.

§ 41-29-131. Denial, suspension, revocation, or refusal to re-new license; proceedings.

(1) Upon presentation before the State Board of Pharmacy by any person showing grounds for denying, suspending or revoking a controlled substance registration, or refusing a renewal of registration, the State Board of Pharmacy may, in its discretion, deny such registration, revoke or suspend such registration or refuse a renewal of such registration.

(2) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the State Board of Pharmacy shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the State Board of Pharmacy at a time and place not less than twenty (20) days after the date of service of the order, but in the case of a denial or renewal of registration, the show cause order shall be served not later than thirty (30) days before the expiration of the registration. Such order may be served by mailing a copy thereof by United States, first-class, certified mail, postage prepaid, to the last-known residence or business address of such registrant. The hearings on such charges shall be at such time and place as the State Board of Pharmacy may prescribe.

(3) At such hearings, all witnesses shall be sworn by a member of the State Board of Pharmacy, and stenographic notes of the proceedings may be taken and filed as a part of the record in the case. Any party to the proceedings requesting it shall be furnished with a copy of such stenographic notes upon payment to the State Board of Pharmacy of such fees as it shall prescribe, not exceeding, however, the actual cost thereof.

(4) The State Board of Pharmacy is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the State Board of Pharmacy shall extend to all parts of the state and such process shall be served by any person designated by the State Board of Pharmacy for such service. The person serving such process shall receive such compensation as may be allowed by the State Board of Pharmacy, not to exceed the fee prescribed by law for similar services. All witnesses who shall be subpoenaed, and who shall appear in any proceedings

before the State Board of Pharmacy, shall receive the same fees and mileage as allowed by law and all such fees shall be taxed as part of the costs in the case.

(5) Where in any proceeding before the State Board of Pharmacy any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(6) The State Board of Pharmacy shall conduct the hearing in an orderly and continuous manner, granting continuances only when the ends of justice may be served. The State Board of Pharmacy shall, within sixty (60) days after the conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last-known residence or business address of such applicant, registrant or holder of a registration, by way of United States, first-class, certified mail, postage prepaid.

(7) Such applicant, registrant, holder of a registration or person aggrieved shall have the right of appeal from an adverse ruling or order or decision of the State Board of Pharmacy to the chancery court, upon forwarding notice of appeal to the State Board of Pharmacy thirty (30) days after the decision of the board is mailed in the manner here contemplated. An appeal will not be allowed in the event notice of appeal, together with the appeal bond hereinafter required, shall not have been forwarded for the State Board of Pharmacy within the period of thirty (30) days.

(8) Appeal shall be to the chancery court of the county and judicial district of the residence of the appellant, or to the chancery court of the First Judicial District of Hinds County, at the election of the appellant. The notice of appeal shall elect venue, unless the appellant be a nonresident, in which event the State Board of Pharmacy shall certify all documents and evidence directly to the chancery court of the First Judicial District of Hinds County for further proceedings. The appeal shall thereupon be heard in due course by the court, which shall review the record and make its determination thereon.

(9) The appellant shall, together with the notice of appeal, forward to and post with the State Board of Pharmacy a satisfactory bond in the amount of two hundred dollars (\$200.00) for the payment of any costs which may be adjudged against him.

(10) Any order, rule or decision of the State Board of Pharmacy shall not take effect until after the time for appeal shall have expired. In the event of an appeal, the appeal shall act as a supersedeas and the court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(11) These proceedings shall be conducted in accordance with applicable administrative procedures without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing.

(12) The Mississippi Bureau of Narcotics or the State Board of Pharmacy may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 41-29-129, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the suspending agency or dissolved by a court of competent jurisdiction.

SOURCES: Codes, 1942, § 6831-66; Laws, 1971, ch. 521, § 16; Laws, 1977, ch. 393; Laws, 2009, ch. 469, § 6, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted “State Board of Pharmacy” for “board” throughout the section; substituted “Bureau of Narcotics” for “Bureau of Drug Enforcement” in (12); and made minor stylistic changes.

Cross References — “Mississippi Bureau of Drug Enforcement” meaning the bureau of narcotics, see § 41-29-105(d).

State board of pharmacy, see § 73-21-75.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 70 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 47 (citation-by licensing authority — command-

ing licensee to appear at proceedings for revocation or suspension of license).

CJS. 28 C.J.S., Drugs and Narcotics §§ 228 et seq.

§ 41-29-133. Records and inventories.

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Optometry or the Mississippi Board of Veterinary Medicine may issue.

SOURCES: Codes, 1942, § 6831-67; Laws, 1971, ch. 521, § 17; Laws, 1983, ch. 488, § 37; Laws, 1983, ch. 522, § 15; Laws, 2001, ch. 470, § 3; Laws, 2005, ch. 404, § 7; Laws, 2009, ch. 469, § 7, eff from and after July 1, 2009.

Editor’s Note — At the direction of the co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the word “of” was deleted preceding “the Mississippi Bureau of Narcotics” to correct a typographical error.

Amendment Notes — The 2009 amendment inserted “of the Mississippi Bureau of Narcotics” and “or the Mississippi Board of Veterinary Medicine.”

Cross References — Record by practitioner of controlled substances administered, dispensed or used by him otherwise than by prescription, see § 41-29-137.

State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 68, 69, 88.

CJS. 28 C.J.S., Drugs and Narcotics § 226.

§ 41-29-135. Order forms.

Controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115, shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

SOURCES: Codes, 1942, § 6831-68; Laws, 1971, ch. 521, § 18, eff from and after passage (approved April 16, 1971).

Cross References — Penalties for violations as to order forms, see §§ 41-29-141, 41-29-143.

RESEARCH REFERENCES

ALR. Propriety, under state law, of manufacturer's or supplier's refusal to sell medical product to individual physician, hospital, or clinic. 45 A.L.R.4th 1006.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 68, 69, 78.

CJS. 28 C.J.S., Drugs and Narcotics Supp § 312.

§ 41-29-137. Prescriptions.

(a)(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II, as set out in Section 41-29-115, may be dispensed without the written valid prescription of a practitioner. A practitioner shall keep a record of all controlled substances in Schedule I, II and III administered, dispensed or professionally used by him otherwise than by prescription.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon the oral valid prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 41-29-133. No prescription for a Schedule II substance may be refilled unless renewed by prescription issued by a licensed medical doctor.

(b) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, as set out in Sections 41-29-117 and 41-29-119, which is a prescription drug as determined under Federal Controlled Substances Act, shall not be dispensed without a written or oral valid prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(c) A controlled substance included in Schedule V, as set out in Section 41-29-121, shall not be distributed or dispensed other than for a medical purpose.

(d) An optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165 shall be authorized to prescribe oral analgesic controlled substances in Schedule IV or V, as pertains to treatment and management of eye disease by written prescription only.

(e) Administration by injection of any pharmaceutical product authorized in this section is expressly prohibited except when dispensed directly by a practitioner other than a pharmacy.

(f)(1) For the purposes of this article, Title 73, Chapter 21, and Title 73, Chapter 25, Mississippi Code of 1972, as it pertains to prescriptions for controlled substances, a “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(A) A practitioner who has conducted at least one (1) in-person medical evaluation of the patient; or

(B) A covering practitioner.

(2)(A) “In-person medical evaluation” means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(B) “Covering practitioner” means a practitioner who conducts a medical evaluation other than an in-person medical evaluation at the request of a practitioner who has conducted at least one (1) in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine within the previous twenty-four (24) months and who is temporarily unavailable to conduct the evaluation of the patient.

(3) A prescription for a controlled substance based solely on a consumer’s completion of an online medical questionnaire is not a valid prescription.

(4) Nothing in this subsection (b) shall apply to:

(A) A prescription issued by a practitioner engaged in the practice of telemedicine as authorized under state or federal law; or

(B) The dispensing or selling of a controlled substance pursuant to practices as determined by the United States Attorney General by regulation.

SOURCES: Codes, 1942, § 6831-69; Laws, 1971, ch. 521, § 19; Laws, 2005, ch. 404, § 5; Laws, 2009, ch. 469, § 8, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Practitioner defined, see § 41-29-105.

Penalties for violations of prescription requirement, see § 41-29-139.

Who may prescribe, administer, dispense or prepare narcotic drugs, see § 41-29-305.

Dispensation of drugs to state executioner, see § 99-19-53.

Federal Aspects — The federal Controlled Substances Act, referred to in (b), is codified at 21 USCS §§ 801 et seq.

JUDICIAL DECISIONS

1. In general.
2. Sufficiency of evidence.

1. In general.

The state was not required to prove the absence of a prescription in a prosecution for possession of a controlled substance, as the defendant had the burden of establishing any exemption or exception. *Smith v. State*, 527 So. 2d 660 (Miss. 1988).

2. Sufficiency of evidence.

Agents testified that they searched the confidential informant (CI) and her car

before and after the sale and that they monitored all of her activity through the audio transmitter. One agent identified defendant's voice as that which he heard over the audio transmitter, and the CI testified as an eyewitness to the cocaine sale and identified defendant as the person from whom she had bought cocaine. While the videotape was not of superior quality, the evidence was sufficient to sustain defendant's conviction. *Fuller v. State*, 910 So. 2d 674 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR. Physician's liability to third person for prescribing drug to known drug addict. 42 A.L.R.4th 586.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

Federal criminal liability of licensed physician for unlawfully prescribing or dispensing "controlled substance" or drug in violation of the Controlled Substances Act (21 USCS §§ 801 et seq). 33 A.L.R. Fed. 220.

Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 79.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

34 Am. Jur. Proof of Facts 2d 199, Druggist's Liability for Improperly Filling Prescription.

38 Am. Jur. Proof of Facts 2d 589, Physician's Liability for Causing Patient's Drug Addiction.

7 Am. Jur. Proof of Facts 3d 1, Injuries from Drugs.

CJS. 28 C.J.S., Drugs and Narcotics § 225.

§ 41-29-138. Applicability of avoirdupois system of weights.

The avoirdupois system of weights shall be the system by which the weights of controlled substances are determined under this article.

SOURCES: Laws, 1986, ch. 325, eff from and after passage (approved March 14, 1986).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 189 et seq.

CJS. 28 C.J.S., Drugs and Narcotics Supp §§ 263 et seq.

§ 41-29-139. Prohibited acts; penalties.

(a) Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

(1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or

(2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in subsections (f) and (g) of this section or in Section 41-29-142, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) In the case of controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except thirty (30) grams or less of marihuana, and except a first offender as defined in Section 41-29-149(e) who violates subsection (a) of this section with respect to less than one (1) kilogram but more than thirty (30) grams of marihuana, such person may, upon conviction, be imprisoned for not more than thirty (30) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or both;

(2) In the case of a first offender who violates subsection (a) of this section with an amount less than one (1) kilogram but more than thirty (30) grams of marihuana as classified in Schedule I, as set out in Section 41-29-113, such person is guilty of a felony and upon conviction may be imprisoned for not more than twenty (20) years or fined not more than Thirty Thousand Dollars (\$30,000.00), or both;

(3) In the case of thirty (30) grams or less of marihuana, such person may, upon conviction, be imprisoned for not more than three (3) years or fined not more than Three Thousand Dollars (\$3,000.00), or both;

(4) In the case of controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119, such person may, upon conviction, be imprisoned for not more than twenty (20) years and shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both; and

(5) In the case of controlled substances classified in Schedule V, as set out in Section 41-29-121, such person may, upon conviction, be imprisoned for not more than ten (10) years and shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), or both.

(c) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Sections 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

“Dosage unit (d.u.)” means a tablet or capsule, or in the case of a liquid solution, one (1) milliliter. In the case of lysergic acid diethylamide (LSD) the

term, "dosage unit" means a stamp, square, dot, microdot, tablet or capsule of a controlled substance.

For any controlled substance that does not fall within the definition of the term "dosage unit," the penalties shall be based upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance.

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance that results in the greater punishment.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marihuana, in the following amounts shall be charged and sentenced as follows:

(A) Less than one-tenth (0.1) gram or one (1) dosage unit or less may be charged as a misdemeanor or felony. If charged by indictment as a felony: by imprisonment not less than one (1) nor more than four (4) years and a fine not more than Ten Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by imprisonment for up to one (1) year and a fine not more than One Thousand Dollars (\$1,000.00).

(B) One-tenth (0.1) gram but less than two (2) grams or two (2) dosage units but less than ten (10) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).

(C) Two (2) grams but less than ten (10) grams or ten (10) dosage units but less than twenty (20) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

(D) Ten (10) grams but less than thirty (30) grams or twenty (20) dosage units but not more than forty (40) dosage units, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00).

(E) Thirty (30) grams or more or forty (40) dosage units or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars (\$1,000,000.00).

(2) Marihuana in the following amounts shall be charged and sentenced as follows:

(A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug education program, approved by the Division of Alcohol and Drug Abuse of the State

Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) and confinement for not less than five (5) days nor more than six (6) months in the county jail. Upon a first or second conviction under this section the courts shall forward a report of such conviction to the Mississippi Bureau of Narcotics which shall make and maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this section and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

(B) Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams, of marihuana is guilty of a misdemeanor and upon conviction may be fined not more than One Thousand Dollars (\$1,000.00) and confined for not more than ninety (90) days in the county jail. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(C) More than thirty (30) grams but less than two hundred fifty (250) grams may be fined not more than One Thousand Dollars (\$1,000.00), or confined in the county jail for not more than one (1) year, or both; or fined not more than Three Thousand Dollars (\$3,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both;

(D) Two hundred fifty (250) grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years and by a fine of not more than Fifty Thousand Dollars (\$50,000.00);

(E) Five hundred (500) grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of less than Two Hundred Fifty Thousand Dollars (\$250,000.00);

(F) One (1) kilogram but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00);

(G) Five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars (\$1,000,000.00).

(3) A controlled substance classified in Schedule III, IV or V as set out in Sections 41-29-117 through 41-29-121, upon conviction, may be punished as follows:

(A) Less than fifty (50) grams or less than one hundred (100) dosage units is a misdemeanor and punishable by not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00).

(B) Fifty (50) grams but less than one hundred fifty (150) grams or one hundred (100) dosage units but less than five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years and a fine of not more than Ten Thousand Dollars (\$10,000.00).

(C) One hundred fifty (150) grams but less than three hundred (300) grams or five hundred (500) dosage units but less than one thousand (1,000) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).

(D) Three hundred (300) grams but less than five hundred (500) grams or one thousand (1,000) dosage units but less than two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

(E) Five hundred (500) grams or more or two thousand five hundred (2,500) dosage units or more, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00).

(d)(1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of one (1) ounce or less of marihuana under subsection (c)(2)(A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not

more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d) (2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both.

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(f) Except as otherwise authorized in this article, any person twenty-one (21) years of age or older who knowingly sells, barter, transfers, manufactures, distributes or dispenses during any twelve (12) consecutive month period: (i) ten (10) pounds or more of marihuana; (ii) two (2) ounces or more of heroin; (iii) two (2) or more ounces of cocaine or of any mixture containing cocaine as described in Section 41-29-105(s), Mississippi Code of 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one hundred (100) or more dosage units of morphine, Demerol, Dilaudid, oxycodone hydrochloride or a derivative thereof, or 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(g)(1) Any person trafficking in controlled substances shall be guilty of a felony and upon conviction shall be imprisoned for a term of thirty (30) years and such sentence shall not be reduced or suspended nor shall such person

be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00).

(2) "Trafficking in controlled substances" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two (2) of the component offenses occurred in different counties. A component offense is any act which would constitute a violation of subsection (a) of this section. Prior convictions shall not be used as component offenses to establish the charge of trafficking in controlled substances.

(3) The charge of trafficking in controlled substances shall be set forth in one (1) count of an indictment with each of the component offenses alleged therein and it may be charged and tried in any county where a component offense occurred. An indictment for trafficking in controlled substances may also be returned by the State Grand Jury of Mississippi provided at least two (2) of the component offenses occurred in different circuit court districts.

SOURCES: Codes, 1942, § 6831-70; Laws, 1971, ch. 521, § 20; Laws, 1972, ch. 520, § 7; Laws, 1977, ch. 482, § 1; Laws, 1981, ch. 502, § 5; Laws, 1982, chs. 323, § 2, 501, § 1; Laws, 1986, ch. 417; Laws, 1989, ch. 569, § 2; Laws, 1995, ch. 368, § 1; Laws, 1998, ch. 506, § 1; Laws, 1999, ch. 341, § 1; Laws, 2004, ch. 437, § 1; Laws, 2005, ch. 463, § 2, eff from and after July 1, 2005.

Cross References — Provision making it a criminal offense to receive or expend funds derived from commission of a felony under this section or to finance or invest funds in furtherance of commission of such felony, see § 41-29-140.

Enhanced penalties for sale of controlled substances within certain distances of schools, see § 41-29-142.

Heavier penalty to adult violating controlled substance prohibitions with respect to providing substance to a minor, see § 41-29-145.

Persons convicted and sentenced under provisions of certain subsections of this section not being considered for probation, parole and the like for the first three years of sentence, see § 41-29-149.

Drug education and treatment provided persons convicted under this section, jurisdiction of such persons, and probation of first offenders under this section, see § 41-29-150.

Exclusion from forfeiture conveyances involved in minor marihuana violations, see § 41-29-153(a)(4)(D).

Authority of local peace officers to enforce this section, see § 41-29-159.

Juvenile names and addresses of those who violate this section as public records, see § 43-21-261.

Ineligibility to have earned time applied to first three years of sentence of offenders convicted under this section requiring mandatory term of confinement, see § 47-5-139.

Ineligibility for earned probation program of persons convicted of offense requiring mandatory prison term under this section for which probation is not allowed, see § 47-7-47.

Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

Punishment for conspiracy to commit certain crimes enumerated in this section, see § 97-1-1.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see §§ 97-43-1 et seq.

Ineligibility of persons charged under provisions of this section for dismissal of action upon successful completion of certain court-imposed conditions, see § 99-15-26.

Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

JUDICIAL DECISIONS

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I. IN GENERAL.

Thirty-year sentence for sale of crack cocaine was within the discretion of the trial court and was not unduly harsh or

excessive. *Allen v. State*, 826 So. 2d 756 (Miss. Ct. App. 2002).

1. In general.

Possession of cocaine, being a lesser-included crime of the sale of cocaine, merged into the sale charge; thus, defendant's conviction for possession of cocaine was reversed. *Edwards v. State*, 878 So. 2d 1106 (Miss. Ct. App. 2004).

Defendant, convicted for selling 0.1 gram of cocaine to an informant, was improperly sentenced to 15 years imprisonment, 8 years to be suspended subject to post-release supervision; the length of time on post-release supervision was discretionary and no length was stated. This sentence was consecutive to the sentence of 15 years, 4 to serve and 11 suspended already being served; Miss. Code Ann. § 41-29-139(b)(1), provided for a maximum of 30 years imprisonment. *Johnson v. State*, — So. 2d —, 2004 Miss. App. LEXIS 594 (Miss. Ct. App. June 22, 2004).

In a prosecution under Miss. Code Ann. § 97-3-47, where defendant admitted giving the victim two oxycodone pills (for which he had a prescription) and finding her unconscious the next morning; the victim's brother testified that he saw defendant attempt to inject the victim with the drug, that she later appeared intoxicated, became ill, and vomited; a pathologist testified that the oxycodone level in the victim's blood was about 5 ½ times higher than the toxic level of oxycodone; and delivery of oxycodone, a Schedule II controlled substance, was itself a crime, the evidence sufficiently proved that the defendant was guilty of manslaughter by culpable negligence. *Nichols v. State*, 868 So. 2d 355 (Miss. Ct. App. 2003), cert. denied, 868 So. 2d 345 (Miss. 2004).

Being under the influence of marijuana is not a designated criminal offense under

our statutes except in conjunction with the operation of a vehicle. *Murray v. State*, 310 So. 2d 919 (Miss. 1975).

2. Construction.

From a plain reading of the statute, it is clear that, in Miss. Code Ann. § 41-29-313, the legislature criminalized the possession, purchase, transfer or distribution of 250 dosage units or 15 grams of weight of pseudoephedrine, and the State has prosecutorial discretion to choose between dosage unit or weight when the drug appears in dosage unit form. Miss. Code Ann. § 41-29-139 does not alter the plain meaning, but provides guidance as to how to proceed when the drug is not in dosage unit form. *Finn v. State*, 978 So. 2d 1270 (Miss. 2008).

Section 41-29-139(a)(1) is merely the provision that defines the prohibitive acts and § 41-29-139(b)(1) is the sentencing provision for subsection (a); the penalty section for a violation of section (a)(1) is in section (b)(1). The discrepancy in the code section is due to the fact that the conspiracy statute section dealing with enhanced sentencing for controlled substances—§ 97-1-1—directly refers to the sentencing provision under § 41-29-139. Thus, a sentence of 20 years imprisonment with 5 years suspended and a fine of \$10,658.50 did not exceed that provided for in § 97-1-1 where the defendant was convicted of conspiracy to possess cocaine with intent to sell, barter, transfer or distribute, since § 97-1-1 provides for a fine not to exceed \$500,000 and/or imprisonment for not more than 20 years where the crime conspired to be committed is a violation of § 41-29-139(b)(1). *Lane v. State*, 562 So. 2d 1235 (Miss. 1990).

Since a statute requires possession of no minimum amount of pentazocine, a scheduled II controlled substance, in order to constitute a crime, possession of any identifiable amount of the substance, however slight, constitutes a crime. *Hampton v. State*, 498 So. 2d 384 (Miss. 1986).

In a prosecution for possession of marijuana with intent to deliver, the word “deliver” in the indictment was equivalent to the statutory term “transfer” as used in § 41-29-139. *Evans v. State*, 460 So. 2d 824 (Miss. 1984).

Where ¶ (2) of subsection (a) of Code 1942, § 6831-70 provides that possession of LSD, being a controlled substance classified in schedule I of the Controlled Substances Law, is a felony, but subsection (c) of Code 1942, § 6831-70 provides that possession of a controlled substance is a misdemeanor, the provisions of the section are in direct conflict, and a defendant convicted of possession of LSD must be sentenced as for a misdemeanor. *Johnson v. State*, 260 So. 2d 436 (Miss. 1972).

Under the rule of construction that words or phrases may be supplied by the courts and inserted in a statute, where that is necessary to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein, it is clear that the intent of the legislature was to permit one guilty of possession of controlled substances to be punished either under subsection (a) or under the lesser punishment of subsection (c) of Code 1942, § 6831-70. *Johnson v. State*, 260 So. 2d 436 (Miss. 1972).

3. Constitutional questions.

Defendant's conviction for possession of cocaine, more than 10 grams, but less than 30 grams, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D), was appropriate because his right to a speedy trial was not violated, in part because there was no actual prejudice to defendant as a result of the delay between arrest and trial. Further, defendant was aware of the possibility that charges would be brought against him as a result of his arrest and he did not seek any resolution of the charges until after he was served with the indictment in June 2006. *Williams v. State*, — So. 2d —, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008).

Post-conviction relief was denied in a case where appellant inmate entered a guilty plea to three counts of selling cocaine because the imposition of three consecutive five-year sentences did not amount to cruel and unusual punishment. The sentence was within the guidelines in Miss. Code Ann. § 41-29-139, and there was no evidence of excessiveness under the facts of the case. *Ramsey v. State*, 973 So. 2d 294 (Miss. Ct. App. 2008).

Defendant was convicted under the subsection that criminalizes the sale of a controlled substance, Miss. Code Ann. § 41-29-139(b), while Miss. Code Ann. § 41-29-139(c) proscribed possession of a controlled substance, and these were two different provisions dealing with two different situations, and they were not ambiguous, as they each clearly stated their purpose; the statute was not unconstitutionally vague as a person of ordinary intelligence would understand by reading the statute that he could face significant prison time for selling cocaine, and the sale of controlled substances did not infringe on any of defendant's constitutionally protected rights. *Westbrook v. State*, 953 So. 2d 286 (Miss. Ct. App. 2007).

A sentence of twenty years for selling cocaine was not cruel and unusual. The sentence was well within the statutory maximum of Miss. Code Ann. § 41-29-139(b)(1), and a threshold comparison of the crime to the sentence yielded no inference of gross disproportionality. *Triplett v. State*, 840 So. 2d 727 (Miss. Ct. App. 2002).

Inmate's double jeopardy rights were not violated as he was not subject to multiple prosecutions or multiple punishments; since the inmate pled guilty to and was sentenced for an offense with maximum sentence of 30 years and a fine, his 30-year sentence was within statutory limits. *King v. State*, 821 So. 2d 864 (Miss. Ct. App. 2002).

The "self-help" provision contained in subsection (f) of this section is unconstitutionally vague based on the due process clause of the Fourteenth Amendment to the United States Constitution. However, the clear intent of the legislature is that the statute is severable and, therefore, the remainder of the subsection is effective. *Lewis v. State*, 765 So. 2d 493 (Miss. 2000).

Issue of whether trial court erred in declaring unconstitutionally void for vagueness statute imposing sentence of life imprisonment without parole for making multiple sales of narcotics was not properly before the Supreme Court, where matter did not appear in record. *Medina v. State*, 688 So. 2d 727 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

Actual conflict of interest, violating defendant's right to effective assistance of counsel, resulted from public defender's representation of both codefendant during plea negotiations and defendant at trial in prosecution originating from simultaneous double sale of drugs. *Smith v. State*, 666 So. 2d 810 (Miss. 1995).

In a prosecution for possession of cocaine with intent to distribute, the defendant was denied his constitutional right to effective assistance of counsel where the defense strategy was to admit guilt to the charge of simple possession of cocaine, but to deny any intent to sell or distribute, the defense counsel failed to object to evidence of the defendant's past drug sales, which was the most damaging piece of evidence presented, he failed to preserve any objection relating to the sufficiency of the evidence for trial court or appellate review, and the evidence was insufficient as a matter of law to support the charge. *Holland v. State*, 656 So. 2d 1192 (Miss. 1995).

In a prosecution for sale of a controlled substance, the defendant was not deprived of his constitutional right to confront witnesses on the ground that the State failed to provide information as to the whereabouts of an informant where the defendant did not allege any bad faith by the State, and the State provided evidence as to its good faith attempt to locate the informant. *Campbell v. Campbell*, 618 So. 2d 116 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the defendant's trial counsel was not constitutionally ineffective for failing to object to allegedly inadmissible testimony portraying the defendant as a drug dealer where the attorney's failure to object to the testimony in question might reasonably have been trial strategy related to a "personal vendetta" defense since the attorney argued from the time of opening statements that a deputy sheriff had a vendetta against the defendant and there was support for the "vendetta" defense throughout the trial record, the attorney could have concluded that any objections to the testimony in question would have magnified the comments to the detriment of the defendant, and the defendant failed to demonstrate any prejudice as there was

eyewitness testimony which was "sufficient to have absolutely sealed his fate with the jury." *Edwards v. State*, 615 So. 2d 590 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the defendant's trial counsel was not constitutionally ineffective for failing to object to an admission made by the defendant at the scene of his arrest concerning his involvement in trafficking drugs where the admission was unsolicited, voluntary, and spontaneous, and the defendant's attorney could have reasonably expected any objection to be futile. *Edwards v. State*, 615 So. 2d 590 (Miss. 1993).

The use of an undercover narcotics agent to enter the premises and purchase cocaine without a search warrant did not violate the defendant's Fourth Amendment rights. *Bradley v. State*, 562 So. 2d 1276 (Miss. 1990).

Inability of state to produce seized marijuana for testing by defendant, because the substances had been stolen from storage, did not infringe defendant's right to cross-examine state's witnesses, where defense counsel did cross-examine the state's drug analyst on her procedure for testing marijuana. *Coyne v. State*, 484 So. 2d 1018 (Miss. 1986).

Where the sale of marijuana for which appellant was convicted occurred when the maximum penalty for such sale was four years imprisonment or a fine of two thousand dollars, or both, the trial court erred in sentencing appellant to a term of ten years and fining him five thousand dollars under the provisions of Code 1972, § 41-29-139, which did not become effective until after the sale in question had occurred; punishment for a crime may not be increased after the crime has been committed under the provisions of Miss Const § 16 and U.S. Const Art 1 § 10 Cl 1. *King v. State*, 304 So. 2d 650 (Miss. 1974).

The fact that the legislature changed the penalty in May, 1972, so as to again make it a felony for one to have in his possession more than one ounce of marijuana, did not take effect until after its enactment and did not result in making the crime, for which the defendant was previously tried, a felony. *Boring v. Missis-*

issippi State Bd. of Dental Exmrs., 300 So. 2d 135 (Miss. 1974).

Since an 8 year sentence for sale of marijuana did not exceed the statutory limits, the sentence could not be either cruel or unusual punishment. *McCormick v. State*, 279 So. 2d 596 (Miss. 1973), overruled on other grounds, *Hopson v. State*, 625 So. 2d 395 (Miss. 1993).

4. Guilty plea.

Defendant's guilty plea to possession of more than two grams but less than ten grams of cocaine pursuant to Miss. Code Ann. § 41-29-139 (Rev. 2005) was freely, voluntarily, and intelligently given because defendant stated that he sought to plead guilty to possession of 5.67 grams of cocaine in his petition to enter a plea of guilty and agreed that he was aware of and understood the charges during his plea colloquy. In addition, the fact that the trial court did not to inform defendant of his right to appeal the resulting sentence under Miss. Code Ann. § 99-35-101 (Rev. 2007) did not make his plea not voluntary or unintelligent because the trial court was not required to do so. *Harris v. State*, — So. 2d —, 5 So. 3d 1127, 2008 Miss. App. LEXIS 477 (Miss. Ct. App. 2008).

Dismissal of the inmate's petition for post-conviction relief was proper because, by entering a plea of guilty to the sale of hydromorphone in violation of Miss. Code Ann. § 41-29-139, he had waived his right to challenge the state's evidence. The inmate's valid guilty plea waived his right to make certain constitutional challenges, including those under the Fourth Amendment. *Burns v. State*, 984 So. 2d 1024 (Miss. Ct. App. 2008).

Post-conviction relief was summarily denied in a case where defendant entered a guilty plea to the sale of cocaine under Miss. Code Ann. § 41-29-139 because the record and his sworn statements at the plea colloquy contradicted his later claim that the plea was not entered knowingly, voluntarily, and intelligently. *Belton v. State*, 968 So. 2d 501 (Miss. Ct. App. 2007).

II. ELEMENTS OF OFFENSE.

5. Possession; constructive possession.

Post-conviction relief was properly denied where defendant entered a guilty

plea to possession of cocaine because there was a factual basis for his plea under Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(3) based on the plea itself and the testimony of an officer about drugs, cash, and other items found in a car where defendant was a passenger. The fact that defendant was riding in a rental car and crossing state lines was enough to show that he had dominion and control over the items. *Ealey v. State*, 967 So. 2d 685 (Miss. Ct. App. 2007).

Motion for a new trial was properly denied where defendant was convicted of possession of a controlled substance because he failed to rebut the presumption that he was in constructive possession of drugs found in the trunk of his car; allowing the verdict to stand would not have sanctioned an unconscionable injustice because it was not so contrary to the overwhelming weight of the evidence presented. This was not an exceptional case where the evidence presented weighed heavily against the verdict. *Robinson v. State*, 967 So. 2d 695 (Miss. Ct. App. 2007).

Motion for a directed verdict or judgment notwithstanding the verdict was properly denied where defendant was convicted of possession of a controlled substance because he failed to rebut the presumption that he was in constructive possession of drugs found in the trunk of his car; it was for the jury to decide if the drugs were placed there by a nephew. Additionally, there was other incriminating evidence connecting defendant to the drugs; defendant was the sole owner and occupant of the car, an odor of marijuana was detected, and he refused a search of the trunk. *Robinson v. State*, 967 So. 2d 695 (Miss. Ct. App. 2007).

Motion for a directed verdict was properly denied in a drug case under Miss. Code Ann. § 41-29-139 because constructive possession was shown where defendant was driving his cousin's car, which contained a very large amount of marijuana; the fact that defendant made an incriminating statement regarding his use of the drugs was significant. *Stingley v. State*, 966 So. 2d 1269 (Miss. Ct. App. 2007).

Motion for a new trial was properly denied in a case involving the possession

of methamphetamine because the evidence was sufficient to support the conviction; defendant's dominion and control over the drugs was established by a girlfriend's testimony about their respective roles in selling methamphetamine. *Bailey v. State*, 981 So. 2d 972 (Miss. Ct. App. 2007).

Evidence was insufficient to sustain convictions for possession of cocaine with intent to deliver because each defendant did not constructively possess the other's drugs; beside defendants being in the car together, no additional evidence of constructive possession was cited. *Dixon v. State*, 953 So. 2d 1108 (Miss. 2007).

In a case where defendant was convicted of possession of marijuana and possession of cocaine, there was no reason for a trial court to grant a peremptory instruction since the evidence was sufficient to show that defendant, a passenger in the vehicle, was in constructive possession of drugs found under the seat where an officer saw him attempting to conceal a package, the driver testified that defendant had the bag containing the drugs when he entered the vehicle, and defendant stated that the items did not belong to him when the officer found them, even though he was unable to see inside the vehicle. *Walker v. State*, 962 So. 2d 39 (Miss. Ct. App. 2006).

There was sufficient evidence to convict defendant of possession of marijuana with intent to distribute where the evidence showed that defendant was in actual or constructive possession of a residence or the marijuana; the utilities and rent agreement were in someone else's name, however defendant stayed overnight there, his clothes were found inside, other bills in defendant's name were mailed to the residence, and defendant's license and registration had the address of arrest on them. *Caldwell v. State*, 938 So. 2d 317 (Miss. Ct. App. 2006).

There was sufficient evidence supporting defendant's conviction for possession and manufacture of illegal substances where a rational jury could have found the dominion and control needed to show constructive possession by defendant were present; the jury instruction as given was a sufficient and accurate statement of the

law regarding constructive possession. *Gross v. State*, 948 So. 2d 439 (Miss. Ct. App. 2006).

As to the issue of possession under Miss. Code Ann. § 41-29-139(a)(1), evidence was sufficient to sustain a conviction where defendants were both aware of the presence and character of cocaine when they were in a car, even though neither party had the entire 20 grams in their physical possession. *Dixon v. State*, 953 So. 2d 1117 (Miss. Ct. App. 2006).

Trial court did not abuse its discretion in admitting a witness's testimony that defendant was present at a drug transaction in which the witness pawned her car to and purchased crack cocaine from a person who then asked defendant to drive the witness home, which he did, but instead of returning with the car, defendant kept it for himself. The evidence was relevant to show how defendant came into possession of the car, thereby helping to establish that defendant was in possession of the cocaine found in the car in violation of Miss. Code Ann. § 41-29-139. *Nelson v. State*, 914 So. 2d 265 (Miss. Ct. App. 2005).

In a drug case, there was insufficient evidence to establish constructive possession of precursor chemicals under Miss. Code Ann. § 41-29-313(1)(a)(i) based on mere proximity to a methamphetamine laboratory located under a trailer; testimony of an alleged accomplice was insufficient to establish control over two precursor chemicals, as required. *Kerns v. State*, 923 So. 2d 210 (Miss. Ct. App. 2005).

Defendant neither testified at trial nor produced witnesses in order to rebut the presumption that he was driving the truck and that he was found to have constructive possession over the methamphetamine. *Spencer v. State*, 908 So. 2d 783 (Miss. Ct. App. 2005).

Defendant's conviction for possession of cocaine with intent to distribute was proper where there was sufficient evidence that he exercised dominion and control over the drugs establishing constructive possession. *Williams v. State*, 892 So. 2d 272 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273 (Miss. 2005).

Where defendant was convicted of possession of more than 30 grams, but less

than 250 grams of marijuana, the fact of defendant's proximity to the paraphernalia at the scene was relevant in showing constructive possession, and defendant's argument that the mobile home was owned solely by defendant's wife, was not a defense, in light of defendant's own statements, and other evidence showing defendant's constructive possession. *Parks v. State*, 853 So. 2d 884 (Miss. Ct. App. 2003).

Facts that defendant was first seen in the bedroom where the marijuana was recovered, and that defendant had 2.7 grams of it on defendant's person, supported a finding of constructive possession, and additionally, two marijuana cigarettes were found in a pair of men's overalls, and no other male lived in the mobile home. *Parks v. State*, 853 So. 2d 884 (Miss. Ct. App. 2003).

To prove constructive possession of drugs, state must have provided evidence that contraband was under dominion and control of defendant; where defendant is not in control of premises, state has burden of providing competent evidence which would connect defendant to drugs, and, if competent evidence fails to connect defendant with contraband, then accused is entitled to acquittal. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Defendants had constructive possession of cocaine carried by defendants' accomplice, who was employee at defendants' place of business and who followed defendants to location of drug delivery in automobile rented by one defendant. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Possession, no matter how fleeting, is sufficient to sustain a conviction; possession is defined, however, in terms of the exercise of dominion and control, and the factor of control is essential. *Berry v. State*, 652 So. 2d 745 (Miss. 1995).

When contraband is found on the premises, there must be evidence, in addition to physical proximity, showing that the defendant consciously exercised control over the contraband, in order to sustain a finding of constructive possession. *Cunningham v. State*, 583 So. 2d 960 (Miss. 1991).

A trial court properly refused an instruction that the State was required to

prove that the defendant had dominion and control over cocaine sufficient to establish possessory interest in order to find the defendants guilty of possession of cocaine, where there was clear evidence establishing actual possession by the defendant from the testimony of a police detective who actually saw the defendant with a canister of cocaine packets; such an instruction deals with constructive possession and would only be appropriate if there were no evidence establishing actual possession of the contraband. *Hicks v. State*, 580 So. 2d 1302 (Miss. 1991).

In order to prove possession, the State must prove that the defendant exercised dominion over the contraband and that the defendant was aware of the presence and character of the substance. *Campbell v. State*, 566 So. 2d 475 (Miss. 1990).

6. Sale, transfer, or delivery; who may be guilty.

Identification evidence was sufficient to convict defendant as the seller of cocaine to an agent. A second agent, who knew defendant from previous contacts, identified him in a videotape of the transaction; the testimony was sufficient to enable a rational jury to conclude that defendant was the person in the video and the one who made the sale. *Downing v. State*, 981 So. 2d 334 (Miss. Ct. App. 2008).

Where defendant gave cocaine to another, who sold the cocaine to a buyer, defendant was properly convicted of selling cocaine, a Schedule II controlled substance, in violation of Miss. Code Ann. §§ 41-29-139(a)(1) and 41-29-142(1), because defendant's act was a constructive transfer. *Pratt v. State*, 870 So. 2d 1241 (Miss. Ct. App. 2004).

Appellate court rejected defendant's argument that the evidence was insufficient to sustain defendant's conviction because defendant was never identified by anyone but the informant, where the taped footage showed the informant talking to defendant and exchanging money for two rocks of crack cocaine, and that footage was backed by the informant's testimony and that of a surveillance officer who testified that the voice on the audiotape was the defendant's. *Pulliam v. State*, 873 So. 2d 124 (Miss. Ct. App. 2004).

Defendant's conviction for the sale of cocaine was proper where the officer's testimony more than adequately met the requirements for a legally sufficient identification of defendant. *Cousar v. State*, 855 So. 2d 993 (Miss. 2003).

No transfer of marijuana occurred where, following an automobile accident, the defendant, who was a passenger in one of the vehicles involved in the accident, momentarily passed a shaving kit containing marijuana to a bystander, presumably in an effort to dispose of it before law enforcement officers arrived; while the activity may have been an attempt to conceal evidence, it was not a criminal transfer because it was never shown that the bystander intended to take possession or accept a "transfer" of a controlled substance. *Meek v. State*, — So. 2d —, 2001 Miss. LEXIS 80 (Miss. Apr. 5, 2001).

The statute does not permit a defense based on the assertion that the defendant was not engaged in the sale of drugs, but was merely a conduit for another. *Lyons v. State*, 766 So. 2d 38 (Miss. Ct. App. 2000).

The exchange of consideration, the intent to place the contraband in commerce, and even the success of the transfer are irrelevant to a factual determination of transfer or delivery. *Meek v. State*, — So. 2d —, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000).

This section requires only that the state prove that a defendant knowingly or intentionally transferred a controlled substance; the state is not required to prove that the defendant personally placed the substance in the hands of the buyer or even knew the buyer prior to the sale. *Sullivan v. State*, 749 So. 2d 983 (Miss. 1999).

The defendant's willingness to assist another person, no matter who that person was, in completing two separate drug sales was sufficient to implicate him as a principal in the transactions. *Flowers v. State*, 726 So. 2d 185 (Ct. App. 1998).

It was not necessary for the prosecution to prove that the defendant exercised dominion and control over the cocaine or that he personally profited from its sale. *Turner v. State*, 573 So. 2d 1340 (Miss. 1990), post-conviction relief denied, 673 So. 2d 382 (Miss. 1996).

The word “distribute” includes transactions which are sales as well as transactions which may not be considered sales; thus, there was no material variance between an indictment and the evidence offered at trial where the defendant was indicted for distribution of a controlled substance and the proof evinced a sale of a controlled substance. *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a “controlled substance,” even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

In a prosecution for distribution of crystal methamphetamine, there was sufficient proof as to the type of schedule controlled substance crystal methamphetamine was, where a crime lab expert testified that the substance contained amphetamine and methamphetamine, since methamphetamine is listed as a controlled substance under § 41-29-115(a), (c)(3). *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

Person who is personally present at drug transaction and who aids and abets sale may be convicted for sale notwithstanding that person never has control of drug and receives no remuneration or consideration. *Minor v. State*, 482 So. 2d 1107 (Miss. 1986).

A defendant who arranged a sale of heroin, received a “finders fee” for locating the purchaser, and was present during the transaction was properly convicted as a principal even though the defendant did not personally transfer the heroin and did not actually receive payment for the heroin. *Washington v. State*, 341 So. 2d 663 (Miss. 1977).

Section 41-29-139(c)(2) does not contemplate that the seller must realize a profit in order to be guilty of the sale of a controlled substance. *Boone v. State*, 291 So. 2d 182 (Miss. 1974).

A person convicted for the sale of LSD should be sentenced under Code 1942 § 6831-70(a)(2), for the legislative intent in the use of the word “delivery” and was to relieve the state of the task, often difficult if not impossible, of proving the consideration paid for the contraband, its intentions being to thwart the exchange or transfer of the substance whether accompanied by consideration or not. *Wilkins v. State*, 273 So. 2d 177 (Miss. 1973).

7. Intent.

Evidence was sufficient to show that defendant intended to distribute drugs because the evidence was uncontradicted that defendant had more drugs than he could use for his personal consumption. *King v. State*, 987 So. 2d 490 (Miss. Ct. App. 2008).

Where the evidence showed that cocaine was sold to an informant on the date of the crime, money from this transaction was found in money discarded during a police chase, and the drugs were packaged in a way that suggested distribution, there was sufficient evidence to support convictions under Miss. Code Ann. § 41-29-139(a)(1) on the issue of intent. *Dixon v. State*, 953 So. 2d 1117 (Miss. Ct. App. 2006).

The phrase “intent to sell” does not apply to all the actions criminalized by the statute; a conviction may be sustained if there is evidence that a person sold, manufactured or transferred contraband or if there is evidence that a person still possessing the contraband had the intention to sell, manufacture, or transfer. *Meek v. State*, — So. 2d —, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000).

Intent to distribute or dispense controlled substances may be established by circumstantial evidence. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Where controlled substance is present in amount which person could reasonably hold for personal use, other evidence of possible involvement in drug trade may be sufficient to establish intent to deliver. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal con-

sumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. *Esparaza v. State*, 595 So. 2d 418 (Miss. 1992).

An offense under § 41-29-139(c) is an offense prohibited by law (*mala prohibita*) and it is not necessary for the state to prove criminal intent. *Boone v. State*, 291 So. 2d 182 (Miss. 1974).

8. Quantity.

Indictment for sale of cocaine under Miss. Code Ann. § 41-29-139(a)(1), (b)(1) (2005) was not defective for omitting the weight or quantity of cocaine sold because the penalty was the same regardless of the quantity sold; thus the amount of cocaine sold was not an essential element of the crime. *Smith v. State*, 973 So. 2d 1003 (Miss. Ct. App. 2007).

Miss. Code Ann. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting drug cases where dosage units are the standard form of measurement, and the weight of the drug is considered a default measurement where the drug is not found in "dosage unit" form; therefore, a motion for post-conviction relief should have been granted because a sentence imposed was illegal where defendant had 180 tablets that weighed above the requisite number of grams. *Finn v. State*, 979 So. 2d 1 (Miss. Ct. App. 2007).

In a case where defendant entered a guilty plea to the sale of cocaine, post-conviction relief was properly denied because an indictment was not ineffective based on a failure to include the amount of drugs sold; this was not an essential element of the crime. *Belton v. State*, 968 So. 2d 501 (Miss. Ct. App. 2007).

Defendant's challenge in a post-conviction proceeding to the sufficiency of an indictment because the indictment improperly put forth the quantity of cocaine that was sold was without merit because Miss. Code Ann. § 41-29-139 did not require an indictment to state the amount of cocaine that was allegedly sold. *Andrews v. State*, 937 So. 2d 483 (Miss. Ct. App. 2006).

Where defendant was convicted of possessing 0.1 gram of cocaine under Miss. Code Ann. § 41-29-139, the State sufficiently proved the quantity of cocaine defendant had possessed pursuant to Miss. Code Ann. § 41-29-139(c)(1)(B); the State's crime lab expert, who analyzed the substance for the presence of a controlled substance, testified that the analysis proved the presence of cocaine and that the weight was 0.1 gram, so the entire amount was properly considered with regard to defendant's conviction. *Walker v. State*, 880 So. 2d 1074 (Miss. Ct. App. 2004).

Where cocaine is incorporated into some other substance, the legislature intended that the weight of the entire mixture be taken as the weight for purposes of criminal liability. *Lewis v. State*, 765 So. 2d 493 (Miss. 2000).

This section requires no minimum amount in order to constitute a crime and, therefore, the existence of cocaine residue is sufficient to support a conviction. *Carroll v. State*, 755 So. 2d 483 (Miss. Ct. App. 1999).

In a prosecution for distribution of a controlled substance, the State sufficiently established that the crystal methamphetamine distributed by the defendant constituted a "controlled substance," even though the crime lab expert did not identify the substance as being solely methamphetamine but testified that it was a combination of amphetamine and methamphetamine, since a drug which contains any amount of methamphetamine is considered a controlled substance under § 41-29-115(a), (c)(3). *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal consumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. *Esparaza v. State*, 595 So. 2d 418 (Miss. 1992).

119.6 grams of marijuana-laden brownies could not be aggregated with 912.3 grams of pure marijuana to satisfy the one

kilogram or more marijuana requirement of § 41-29-139(c)(2)(D). *Drane v. State*, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

A defendant was improperly convicted of possession of more than one ounce of marijuana where the marijuana in his possession weighed 29.8 grams which, although more than the avoirdupois ounce of 28.3 grams, was less than the troy or apothecaries ounce of 31.1 grams; if the legislature had intended for the avoirdupois ounce to be used, it would have distinguished the avoirdupois ounce from the troy or apothecaries ounce as specified in the National Bureau of Standards Handbook which provides that the word "avoirdupois" or the abbreviation "avdp" be used to specify that unit of weight. The imposition of a sentence of five years for possession of phencyclidine, a Schedule I drug, was excessive under § 41-29-139 which provides for a sentence not exceeding three years for possession of a controlled substance classified as a Schedule I or II drug. *Horton v. State*, 408 So. 2d 1197 (Miss. 1982).

9. Conspiracy.

The evidence was insufficient to support a conviction for conspiracy to sell cocaine where the defendant directed the buyer to the seller's house, accompanied the buyer to the door, knocked on the door, told the seller that they wanted to purchase cocaine, and remained with the buyer and seller while the sale took place, but there was no evidence that the seller knew that the defendant would bring the buyer to his home; although an agreement to sell cocaine could possibly be inferred, there was insufficient evidence of the alleged conspirators' recognition that they were "entering into a common plan and knowingly intended to further its common purpose." *Johnson v. State*, 642 So. 2d 924 (Miss. 1994).

The uncorroborated testimony of an alleged accomplice was insufficient to support a conviction for conspiracy to manufacture marijuana where the accomplice contradicted himself concerning payments allegedly made to him by the defendant, and another witness' testimony substantially impeached that of the

accomplice; although the other witness had reasons for bias and a fair-minded juror could reject his testimony as unconvincing, it could not be discarded so completely as to eliminate reasonable doubt, particularly when combined with the accomplice's self-contradictory statements. *Flanagan v. State*, 605 So. 2d 753 (Miss. 1992).

Evidence that a police officer, while standing outside an apartment door, overheard a conversation between 3 people inside the apartment concerning a sale of cocaine, was insufficient to support a conviction for conspiracy to distribute the cocaine where the statements overheard by the officer were not identified as coming from any particular person. *Mickel v. State*, 602 So. 2d 1160 (Miss. 1992).

On trial of felony charge of conspiring to distribute more than one kilogram of marijuana, giving of instructions which would allow the jury to find defendants guilty based on acts in furtherance of the conspiracy without requiring a separate finding that they knowingly became a part of the agreement to commit the crime, while erroneous, did not require reversal, where defendants failed to object, and the deficiency of the instructions was cured by other instructions given. *Gray v. State*, 487 So. 2d 1304 (Miss. 1986).

Conviction of conspiracy was not supported by evidence which, although raising strong suspicions that defendant and others were illegally involved in drug related activities, failed to show that they had intended or agreed to sell, barter, transfer, and distribute marijuana. *McCray v. State*, 486 So. 2d 1247 (Miss. 1986).

Conviction for conspiracy to possess and distribute controlled substances does not require showing of positive and mutual agreement; all that must be shown is concert of free will; conspiracy may be proved by acts of parties or by circumstances, as well as by agreement. *Griffin v. State*, 480 So. 2d 1124 (Miss. 1985).

10. Lesser included offenses.

Defendant was not entitled to a lesser-included offense instruction for simple possession on his conviction of transfer of a controlled substance, because defendant argued that he did not participate in the

sale of the drugs nor did he have anything to do with the drugs, and given defendant's argument at trial that he had nothing to do with the drugs, the appellate court could not find that a jury instruction on simple possession was warranted. *Duckworth v. State*, 989 So. 2d 917 (Miss. Ct. App. 2007).

Where the only evidence of a smaller amount of marijuana was the fact that defendant only paid \$70, and the price of an ounce was around \$100, this was insufficient to entitle him to a lesser included instruction on the crime of possession of less than one ounce of marijuana; the laboratory report showed that the amount found was more than one ounce. *Walker v. State*, 962 So. 2d 39 (Miss. Ct. App. 2006).

Where defendant was convicted of possession of 0.1 gram of cocaine in violation of Miss. Code Ann. § 41-29-139, the trial court did not err in failing to give the jury a lesser-included offense instruction regarding the possession of less than 0.1 gram of cocaine; since there was no evidence offered that the substance weighed less than 0.1 gram, there was no evidentiary support for the instruction that defendant requested. *Walker v. State*, 880 So. 2d 1074 (Miss. Ct. App. 2004).

Since state's evidence showing defendant had possession of 119.6 grams of marijuana-laden brownies and 912.3 grams of pure marijuana was insufficient to support a conviction of possession of one kilogram or more under § 41-29-139(c)(2)(D), because the weights could not be aggregated, but did establish defendant's guilt of the lesser offense of possession of more than one ounce, but less than one kilogram, under subpart (c)(2)(C) of the same statute, the proper procedure for the Supreme Court was to remand the case for resentencing on the lesser offense. *Drane v. State*, 493 So. 2d 294 (Miss. 1986), cert. denied, 482 U.S. 916, 107 S. Ct. 3189, 96 L. Ed. 2d 677 (1987).

Defendant charged with sale and delivery of marijuana is not entitled to instruction of lesser included offense of possession of marijuana where testimony of defendant in his own behalf is practically tantamount to confession that he sold and delivered marijuana, if not to undercover agent in person, than to confidential infor-

mant in agent's presence. *Messer v. State*, 483 So. 2d 338 (Miss. 1986).

Although due to a temporary legislative oversight the possession of marijuana with intent to sell is not made unlawful by statute, a conviction for possession of marijuana with intent to sell would not require reversal where the indictment properly charged the lesser included offense of possession of more than an ounce of marijuana. *Mosley v. State*, 358 So. 2d 1318 (Miss. 1978).

Conviction of defendant of possession with intent to sell marijuana under § 41-29-139(a) was error since that section does not make it a criminal offense; conviction under § 41-29-139(d)(2)(B) was proper since evidence was uncontradicted that he had in his possession 59.4 pounds of marijuana. *Joyce v. State*, 327 So. 2d 255 (Miss. 1976).

III. PROSECUTION; PROCEDURE.

11. Indictment.

Where defendant was charged with possession of a controlled substance with the intent to sell or distribute under Miss. Code Ann. § 41-29-139(a)(1), no prejudicial error occurred when the State was permitted to amend the indictment to allege that the crime was committed within 1,500 feet of a day care center instead of a park because the amendment did not change the crime for which defendant was charged but merely amended the allegations related to the enhancement provisions of Miss. Code Ann. § 41-29-142 to comport with the evidence that would be presented at trial. Further, because the indictment was amended six months before trial commenced, the defense was given sufficient notice to prepare and adjust their defense accordingly. *Tarver v. State*, — So. 2d —, 2009 Miss. App. LEXIS 40 (Miss. Ct. App. Jan. 27, 2009).

Indictment was sufficient under Miss. Unif. Cir. & County Ct. Prac. 7.06 because it listed the state, court, and county in which the indictment was being brought. Furthermore, because the weight involved in a charge of possession of cocaine under Miss. Code Ann. § 41-29-139 only affected the penalty imposed, not the crime itself, there was no problem with the amend-

ment of the indictment. *Harris v. State*, — So. 2d —, 5 So. 3d 1127, 2008 Miss. App. LEXIS 477 (Miss. Ct. App. 2008).

Inmate was not entitled to post-conviction relief on the ground that the indictment was defective because the indictment charged the inmate with knowingly and intentionally selling cocaine in violation of Miss. Code Ann. § 41-29-139, which was sufficient to notify the inmate that the inmate was charged with the crime of knowingly and intentionally selling a Schedule II controlled substance under § 41-29-139(a)(1) and that the inmate could be sentenced under § 41-29-139(b)(1). *Stepp v. State*, 958 So. 2d 257 (Miss. Ct. App. 2007).

Defendant did not have a meritorious claim when he stated that he received ineffective assistance of counsel because counsel did not inform defendant about a “defect” in the indictment; the fact that the indictment did not set forth the price obtained for the cocaine or the weight of the cocaine did not make the indictment defective because price and weight were not elements of the crime. *Dunlap v. State*, 956 So. 2d 1088 (Miss. Ct. App. 2007).

Post-conviction relief was denied in a case where defendant was convicted of the sale of cocaine because the indictment satisfied Miss. Unif. Cir. & County Ct. Prac. R. 7.06 when it included the date that the offense was allegedly committed; moreover, the money received and the amount of cocaine did not have to be included in the indictment they were not elements of the crime under Miss. Code Ann. § 41-29-139(a)(1), (b)(1). *Shorter v. State*, 946 So. 2d 815 (Miss. Ct. App. 2007).

Defendant’s indictment was not defective under Miss. Unif. Cir. & County Ct. Prac. R. 7.06 where defendant’s assertion that the indictment needed to mention a particular quantity of drug was flawed, and cocaine was a Schedule II drug that was made criminal by Miss. Code Ann. § 41-29-139(c), and a particular quantity was not specified; thus, the amount of cocaine that defendant sold was not an essential element to the crime. *Mosley v. State*, 941 So. 2d 877 (Miss. Ct. App. 2006).

Even if a petition for post-conviction relief had not been procedurally barred,

an indictment for the sale of cocaine was not fatally flawed for failing to state the amount of cocaine because this was not required. *Glenn v. State*, 940 So. 2d 969 (Miss. Ct. App. 2006).

Trial court properly denied a petition for post-conviction relief where an indictment was not invalid for failing to state the specific amount of cocaine that petitioner was charged with selling; there was no requirement that a specific amount of a controlled substance be found for a person to be convicted under Miss. Code Ann. § 41-29-139. *Elliott v. State*, 939 So. 2d 824 (Miss. Ct. App. 2006).

Indictment charging appellant with selling of cocaine was not required to allege the weight of the controlled substance, because it was not an element of the crime defined in Miss. Code Ann. § 41-29-139(a)(1); the indictment was valid because it charged that appellant did “knowingly and intentionally sell or transfer” cocaine. *Hammond v. State*, 938 So. 2d 375 (Miss. Ct. App. 2006).

So long as the state proved that defendant knowingly possessed the drugs in question, he in fact committed a felony according to Miss. Code Ann. § 41-29-139; therefore, the language “willingly, unlawfully, feloniously” in the indictment was mere surplusage, and the fact that the form of the verdict instruction omitted this surplusage was not erroneous as it created no injustice. *McKlemurry v. State*, 947 So. 2d 987 (Miss. Ct. App. 2006).

Defendant’s convictions for two counts of the sale of a controlled substance were appropriate because an amendment to her indictment served only to aid her since the sale of a Schedule III substance was penalized less severely than the sale of a Schedule II substance under Miss. Code Ann. § 41-29-139(b); her defense was not prejudiced by the amendment. *Graham v. State*, 935 So. 2d 1119 (Miss. Ct. App. 2006).

Defendant argued that due to the indictment’s failure to specifically identify the confidential informant listed, his defense was unduly prejudiced and therefore the verdict should have been overturned. However, a review of the record showed defendant did not object to the contents of the indictment at the trial

level, thus waiving this issue for appeal; in any event, such a variance between the indictment and the proof presented at trial was not considered a fatal variance, and the State thoroughly demonstrated that the subject individual purchased cocaine from defendant while acting as a confidential informant. *Jerningham v. State*, 910 So. 2d 748 (Miss. Ct. App. 2005), cert. dismissed, 933 So. 2d 303 (Miss. 2006).

Where defendant was charged with possession of marihuana, the failure of the first grand jury to return a true bill against him did not terminate the prosecution against him. The two-year statute of limitations under Miss. Code Ann. § 99-1-5 was not a bar to his prosecution where he was arrested for the offense within two years of the date in which he allegedly committed it. *State v. Parkman*, 906 So. 2d 888 (Miss. Ct. App. 2005).

In a case related to the sale of cocaine, post-conviction relief was properly denied because appellant's indictment was not faulty, as neither Miss. Code Ann. § 41-29-139(a)(1) nor (b) required that a specific amount of cocaine be included in the indictment; although § 41-29-139(b) contained sentencing standards for crimes involving marijuana depending on the amount of the controlled substance, such limitations did not apply to crimes involving cocaine. *Waites v. State*, 872 So. 2d 758 (Miss. Ct. App. 2004).

Defendant alleged, in his claim for post-conviction relief, that the indictment was defective as it failed to specify the amount of cocaine allegedly sold; however, the amount was not an essential element of the crime. *Campbell v. State*, 878 So. 2d 227 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 66 (Miss. 2004).

Where defendant sold a substance represented to be cocaine to an undercover cooperating individual and defendant was subsequently arrested at his residence, where a bottle containing a substance resembling crack cocaine was discovered hidden under the kitchen sink, defendant was not subjected to double jeopardy because the indictment did not determine whether the cocaine in the residence was from the same quantity of the illegal illegal drug; it was not necessary for an

indictment to so specifically identify the particular quantity of narcotic by language that it could, by those descriptive terms alone be distinguished from any other quantity of the same type of narcotic. *Wright v. State*, 863 So. 2d 1005 (Miss. Ct. App. 2004).

An indictment for unlawful possession of cocaine need not mention a particular quantity of the drug. *Carroll v. State*, 755 So. 2d 483 (Miss. Ct. App. 1999).

An indictment was sufficient where it charged the defendant, in plain language, with the crime of unlawful possession of cocaine; the indictment's failure to narrowly focus onto a particular subsection within the allegedly violated statute was not necessary to inform the defendant of the essential elements of the crime. *Carroll v. State*, 755 So. 2d 483 (Miss. Ct. App. 1999).

Issue of whether indictment was flawed as it charged two separate crimes within a single-count indictment was not properly before the Supreme Court, where defendant did not raise issue until after trial. *Medina v. State*, 688 So. 2d 727 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

Any error that resulted from indictment's possible duplication in charging two separate crimes within a single-count indictment was harmless, because ambiguity did not diminish defendant's ability to defend herself against charge on which she was ultimately convicted of transfer of cocaine; simple sale of cocaine on one occasion, for which defendant was found guilty, was quite clearly a lesser included offense of "drug kingpin" provision, regardless of whether that provision constituted an enhancement or an entirely separate crime. *Medina v. State*, 688 So. 2d 727 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

State may be allowed to proceed on indictment charging 5 counts of possession of controlled substances where crimes charged have same elements and proof, although carrying different maximum punishments, and arose from same transaction or occurrence; trial court properly recognizes different maximum punishments by sentencing defendant separately on each charge for which con-

victed. *Dixon v. State*, 465 So. 2d 1092 (Miss. 1985).

An indictment charging defendant with conspiracy to "deliver" cocaine, in violation of § 41-29-139, was not faulty, even though the statute does not use the word "deliver", since "transfer", the word used in the statute, is the equivalent of "deliver"; moreover, pursuant to § 99-7-21, any defect in the indictment was waived, since defendant did not demur to the indictment before the jury was impaneled. *Gandy v. State*, 438 So. 2d 279 (Miss. 1983).

In a prosecution for the sale of marijuana where the indictment failed to specify whether the amount sold was more or less than one kilogram, the trial court properly held that if the defendant were convicted he would be sentenced under the statute which imposed the lesser punishment. *Broadus v. State*, 392 So. 2d 203 (Miss. 1980).

Indictment charging appellant with the possession of more than one ounce of marijuana with intent to sell was erroneous as there is no statute making such possession with intent to sell a crime; however, as possession of more than one ounce of marijuana is a crime, the indictment charged appellant with a criminal offense and the words "with intent to sell" should have been stricken as surplusage. *Schloder v. State*, 310 So. 2d 721 (Miss. 1975).

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. *Wolf v. State*, 281 So. 2d 445 (Miss. 1973).

Where the sale of marijuana was a crime before the Uniform Controlled Substances Law of 1971 became effective, and likewise constituted a crime under the 1971 Law, an indictment charging the defendant with a violation of the Law by sale of marijuana before the effective date

of the Law, sufficiently charged the crime of selling marijuana under prior law, and a referencing indictment to the Law was at most mere surplusage. *Alston v. State*, 258 So. 2d 436 (Miss. 1972).

An indictment which charged that on a given date, the defendant wilfully, unlawfully, and feloniously sold marijuana contrary to the statute, charged the essentials of the offense and it was not necessary to state the name of the person who purchased the marijuana. *Young v. State*, 245 So. 2d 26 (Miss. 1971).

12. Burden of proof.

By proving that the pills defendant transferred were Oxycodone, the State proved that she transferred a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) (2001) because Oxycodone was in fact a Schedule II controlled substance under Schedule II, Miss. Code Ann. § 41-29-115 (A)(a)(1)(xiv) (2001), and the designation of Oxycodone as a controlled substance was not a question of fact for the jury. *Lawrence v. State*, 928 So. 2d 894 (Miss. Ct. App. 2005).

Evidence that defendant to charge of possession of marijuana with intent to sell occupied and inhabited and had dominion and control over apartment, in bathroom of which 5 grocery bags of marijuana were found, is direct, not circumstantial, and does not saddle prosecution with heightened burden of proof of guilt to exclusion of every reasonable hypothesis consistent with innocence and does not entitle defendant to circumstantial evidence instruction. *Keys v. State*, 478 So. 2d 266 (Miss. 1985).

In a drug prosecution, where owner of property the State sought to have forfeited was not charged with illegal conduct, all the State needed to prove, under § 41-29-139, was that the seized items were possessed by the defendant with the intent to be used in connection with an illegal smuggling conspiracy. *Reed v. State ex rel. Miss. Bureau of Narcotics*, 460 So. 2d 115 (Miss. 1984).

In the trial of a defendant charged with the crime of delivering marijuana to a named individual, and who was subsequently convicted there is no burden on the state to negate the assertion that the defendant was one of the persons privi-

leged under the controlled dangerous substances law to possess marijuana. *Heidelberg v. State*, 272 So. 2d 922 (Miss. 1973).

13. Entrapment.

Trial court did not err in disallowing testimony of defendant's bad childhood and relationship with her mother, as her defense of entrapment was whether she was predisposed to commit the crime and was induced by law enforcement to do so; defendant testified to everything that she claimed her mother would have testified, and the jury was able to hear the effect of the mother's illness on defendant, plus other testimony concerning an alleged grudge by one agent would have been irrelevant and confusing and misleading to the jury, plus that agent turned over the information to another agent, who made the decision to proceed with the buy. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Defendant did not make out prima facie case of entrapment so as to be entitled to instruction on entrapment defense in prosecution for selling crack cocaine, despite evidence that defendant would not have made sale of cocaine to law enforcement agent if agent had not approached him; defendant was asked to sell the substance and he was caught, and no one coerced or otherwise forced defendant to deliver substance to agent. *Walls v. State*, 672 So. 2d 1227 (Miss. 1996).

In a prosecution for delivery of marijuana and possession of marijuana with intent to distribute, the evidence was sufficient to support the jury's finding that the defendants were not entrapped, in spite of the defendants' argument that all of the marijuana involved in the case had been supplied by a confidential informant and that an undercover narcotics agent had induced one of the defendants to sell a portion of what the confidential informant had supplied, where the narcotics agent testified that he did not know of anyone associated with the State, including the confidential informant, who had furnished the marijuana to the defendants, and there was substantial circumstantial evidence of predisposition on the part of both defendants. *Bosarge v. State*, 594 So. 2d 1143 (Miss. 1991).

A defendant's testimony that a confidential informant, who was assisting law enforcement agencies in undercover investigations, had furnished the marijuana which the defendant later sold to an undercover police officer at the informant's request was sufficient to establish the defense of entrapment in a prosecution against the defendant for sale of marijuana. *Pulliam v. State*, 592 So. 2d 24 (Miss. 1991).

In a prosecution for sale of cocaine, the evidence was sufficient to support the jury's rejection of the defendant's defense of entrapment, even though the defendant offered 2 witnesses who said that they had seen the informant who purchased the cocaine from the defendant at the defendant's trailer several times during the week before the sale, where the defendant did not offer any witnesses who were present when the informant supposedly talked to the defendant. *Bush v. State*, 585 So. 2d 1262 (Miss. 1991), opinion after remand, 597 So. 2d 656 (Miss. 1992).

A defendant who was convicted of the sale of cocaine was entitled to a new trial where a confidential informant had told the defendant that the informant owed a third party some money, that he could not go with his "cousin" (an undercover narcotics agent) to get some cocaine, but he would give the defendant \$5 if he would go get it "for him and his cousin," the defendant took the undercover agent to the third party's house and went inside and purchased cocaine for the agent, and there was no evidence of whether the third party was acting on behalf of the narcotics agents. Since the defendant would be entitled to an acquittal on the ground of entrapment if the third party was assisting the narcotics agent, it was relevant for a jury to hear first hand evidence of whether the third party was or was not acting on behalf of the agents, and the State should have been required to provide such evidence. *Daniels v. State*, 569 So. 2d 1174 (Miss. 1990).

The State is not permitted to conduct a "supply-and-buy" sale of drugs, whereby a confidential informant supplies contraband to the defendant and an undercover narcotics agent then purchases the contraband from the defendant. Supply-and-

buy has great potential for abuse. The accused is put in a position where he or she may only plead entrapment, where he or she must admit the underlying criminal act, deny a disposed (and subjective) state of mind and open up his or her entire life as the prosecution litigates predisposition, virtually assuring that the jury will never acquit the guilty and few, if any, of the innocent. Supply-and-buy strips the accused of important protections the law would otherwise afford him or her—that he or she stand trial for the offense charged in the indictment and for that alone. It thus vests in the Bureau of Narcotics great power to decide who is guilty and to set up its mark so that he or she is without practical chance for acquittal. This is not where the constitution puts the power to decide guilt or innocence. Moreover, the stratagem requires that prosecution agents practice deception en route to not one but 2 otherwise criminal acts—the supply and the buy. *Tanner v. State*, 566 So. 2d 1246 (Miss. 1990).

In a prosecution for sale of marijuana, the defendant made a *prima facie* case of entrapment and it was reversible error for the trial court to deny him an instruction on the entrapment defense where the defendant testified that he and the informant had been extremely close friends for several years, the informant called 15 or 20 times trying to persuade him to purchase some marijuana for a “friend” (an undercover agent), and that he made no profit from the drug transaction. Furthermore, the trial court erred in restricting the defendant in the development of his entrapment defense where, on numerous occasions, the defendant sought to question the undercover agent and the informant on matters that concerned either their credibility, bias, or interest in persuading the defendant to engage in an illegal drug transaction and the trial judge repeatedly sustained the State’s objections to this line of questioning on the grounds that the questions concerned irrelevant or collateral matters. *Avery v. State*, 548 So. 2d 385 (Miss. 1989).

Where a defendant’s testimony stands uncontradicted, undisputed, and unimpeached, even though the jury may not have believed the defendant, that testi-

mony stands and makes out the defense. In such cases, prosecutors must have rebuttal evidence at hand to refute such testimony. Thus, in a prosecution for sale of marijuana, a defendant’s motion for a directed verdict at the conclusion of all of the evidence in the case should have been granted where the defendant established the defense of entrapment by his own uncontradicted and unimpeached testimony. *Gamble v. State*, 543 So. 2d 184 (Miss. 1989).

A defendant accused of selling marijuana was entitled to have an entrapment instruction submitted to the jury based on his testimony that he had never made a sale of marijuana before, that he had no plans, intent or disposition to make such a sale, and that, had it not been for the importuning of the Bureau of Narcotics confidential informant, he would not have done so. *King v. State*, 530 So. 2d 1356 (Miss. 1988).

Adverse sale or reverse undercover operation, in which narcotics officers attempted to sell or furnish marijuana owned by the state to defendant and his colleagues, constituted entrapment, since the predisposition to commit the crime was instigated by the narcotics officers, and the defense of entrapment could be interposed to the charge of conspiracy to possess marijuana without the defendant taking the stand to testify. *Barnes v. State*, 493 So. 2d 313 (Miss. 1986).

14. Jury instructions.

Defendant made no contemporaneous objection at trial to the prosecutor’s question on *voir dire*, such that the issue was waived, but notwithstanding the procedural bar, the issue was without merit because the error, if any, was harmless; *Miss. Unif. Cir. & County Ct. Prac.* 3.07, cited by defendant, dealt with written jury instructions and was irrelevant to the issue, and assuming for the sake of argument that the prosecution impermissibly offered an opinion on the law, contrary to *Miss. Unif. Cir. & County Ct. Prac.* R. 3.05, any error was harmless because the prosecutor did not misstate the law and the jury was later properly instructed on the law of possession, in defendant’s trial for possession of more than five kilograms of marijuana in *Miss. Code Ann.* § 41-29-

139(c)(2)(G). *Morales v. State*, 990 So. 2d 273 (Miss. Ct. App. 2008).

Trial court's refusal to give a proposed instruction by defendant did not require reversal because its contents were covered fairly elsewhere in instructions given by the trial court; read as a whole, the instructions fairly announced the law and created no injustice in defendant's trial for possession of more than five kilograms of marijuana in Miss. Code Ann. § 41-29-139(c)(2)(G). *Morales v. State*, 990 So. 2d 273 (Miss. Ct. App. 2008).

Defendant was not entitled to a lesser-included offense instruction relating to possession simply based on the fact that she momentarily possessed crack cocaine before it was sold; there was no other evidence that would have supported a possession conviction. *Spann v. State*, 970 So. 2d 135 (Miss. 2007).

Defendant failed to establish entrapment as a matter of law; the trial court did not err in not submitting an entrapment as a matter of law instruction, given that the trial court found that the facts did not support defendant's claim that law enforcement acted outrageously, plus the court had previously found no entrapment as a matter of law in situations where law enforcement provided the money to the confidential informant to make a purchase, and the court was not persuaded by defendant's claim that her situation was similar to a "reverse sale." *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to request a jury instruction on possession of precursor chemicals under Miss. Code Ann. § 41-29-139(b)(1) because the two offenses carried the same penalty. *Myhand v. State*, 981 So. 2d 988 (Miss. Ct. App. 2007).

In a case involving cocaine possession under Miss. Code Ann. § 41-29-139(c)(1)(B), jury instructions given regarding the presumption of possession against defendant as the owner of a vehicle were not erroneous because it was for the jury to decide if defendant was the actual owner of such where title had not

been transferred; moreover, when reading the instructions given as a whole, they contained language requiring proof that defendant had "intentional and conscious" control over the illegal substances. *Bates v. State*, 952 So. 2d 320 (Miss. Ct. App. 2007).

Elements for the charge of sale of cocaine as listed in Miss. Code Ann. § 41-29-139 were necessarily included to prove the crime of sale of cocaine while in possession of a firearm under Miss. Code Ann. § 41-29-152, as § 41-29-152 simply provided for an enhanced penalty for the commission of a crime under § 41-29-139, but it was still necessary that each element of the charged offense under § 41-29-139 be proven; the jury was properly instructed that defendant could be found guilty of sale of cocaine, a lesser-included offense to the charge of sale of cocaine while in possession of a firearm, and thus pursuant to Miss. Code Ann. § 99-19-5(1), there was no merit to the argument that the indictment against was not valid because a lesser-included offense was not stated. *Davis v. State*, 950 So. 2d 1073 (Miss. Ct. App. 2007).

Defendant argued it was plain error for the trial court to have granted the subject instruction because its language did not include the word "sell" for which he was indicted and later convicted. Instead, the words "transferred or delivered" were included; his substantial rights were not affected and his argument was without merit as Miss. Code Ann. § 41-29-139(a)(1) enumerated several offenses including, to sell, barter, transfer, or possess a controlled substance, the indictment noted that the criminal charge he faced was the "sale or transfer" of a controlled substance, and the scope of the jury instruction in question was not broader than the indictment. *Kelly v. State*, 910 So. 2d 535 (Miss. 2005).

In defendant's trial for sale of cocaine, trial court did not err in failing to instruct on all elements upon the face of the indictment. First, defendant failed to timely object; second, Miss. Code Ann. § 41-29-139 only required a person to either knowingly or intentionally sell a controlled substance. *Steen v. State*, 873 So. 2d 155 (Miss. Ct. App. 2004).

Because proof of defendant's guilt of the elements for sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139 would not constitute proof of the elements of false representation in violation of Miss. Code Ann. § 41-29-146, a lesser-included offense jury instruction was not justified. *Green v. State*, 856 So. 2d 396 (Miss. Ct. App. 2003).

Where defendant charged with selling cocaine claimed to have sold fake and not real cocaine to undercover officer and offered video of officer complaining about the fake, trial court improperly refused to instruct jury on lesser non-included offense of selling fake cocaine under Miss. Code Ann. § 41-29-146(1). *Green v. State*, 884 So. 2d 733 (Miss. 2004).

In a case where defendant failed to preserve error regarding a lesser, non-included offense jury instruction, because the laboratory results indicating that the substance defendant sold to the undercover officer was cocaine, the absence of the instruction was not such a significant matter as to rise to the level of plain error. *Green v. State*, 856 So. 2d 396 (Miss. Ct. App. 2003).

Although delivery was not specifically enumerated as a crime in Miss. Code Ann. § 41-29-139(a)(1), the word delivery was equated with transfer or distribute, and delivery of cocaine was to be considered a separate offense of the same magnitude as selling cocaine; thus a jury instruction was given in error as appellant's indictment charged her only with the sale of cocaine, but a granted jury instruction was more extensive and a deviation from the charge in the indictment, using the words sell, barter, or otherwise dispense or deliver. *Mitchell v. State*, 788 So. 2d 853 (Miss. Ct. App. 2001).

Defendant convicted of possessing methamphetamine waived appellate review of his claim that trial court erred by refusing his instruction which correctly spoke to jury's need to find that defendant was "beyond a reasonable doubt," "aware of the presence and character of the particular substance and was intentionally and consciously in possession of it"; defense counsel refused to delete portions of that proposed instruction that trial court found offending and superfluous, and de-

fendant, without objection, refused to submit amended version upon trial court's request. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

Jury instruction stating that where person is occupying and exercising control over automobile, he is presumed to be in possession of contents (i.e., drugs found therein) of automobile, was, standing alone, incorrect statement of law concerning constructive possession, for purposes of prosecution for possession of methamphetamine; however, coupled with instruction that spoke to "conscious control" over illegal substance, there was no error looking at jury instructions as whole. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

Defendant's requested instruction regarding his theory of the case, which was that he did not participate in drug transaction but rather was used as decoy, was adequately covered by instructions precluding jury from finding defendant guilty unless it determined that defendant participated in the transaction, and thus, defendant was not entitled to requested instruction. *Triplett v. State*, 672 So. 2d 1184 (Miss. 1996).

Case against defendant was not based entirely on circumstantial evidence, and thus, "2-theory" instruction was not required in defendant's prosecution for cocaine possession, where motel room in which cocaine was found was registered in name of defendant alone and only one key had been issued to its occupant, and defendant's own testimony placed cocaine inside motel room. *Petti v. State*, 666 So. 2d 754 (Miss. 1995).

In a prosecution for sale of a controlled substance, the mere fact that one must possess a controlled substance before he or she can sell it is not enough to require a lesser included offense instruction on possession of a controlled substance. *Reynolds v. State*, 658 So. 2d 852 (Miss. 1995).

In a prosecution for sale of cocaine, the trial court committed reversible error by deleting a portion of an alibi instruction stating that the "defendant is not required to establish the truth of the alibi to your satisfaction," since the omitted language was an essential part of the instruction, and the deleted language was not and

could not be covered by general instructions on the presumption of innocence. *Jackson v. State*, 645 So. 2d 921 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the trial court erred in refusing to give a lesser included offense instruction which would have allowed the jury to find the defendant guilty of simple possession of marijuana, even though the defendant's alleged accomplice testified that they intended to sell the marijuana, where the defendant was an admitted marijuana user and the amount of marijuana found was not so large as to preclude the purpose of personal use, since the jury was free to disregard the alleged accomplice's testimony that the marijuana was for sale. *Perry v. State*, 637 So. 2d 871 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the defendant was not entitled to a circumstantial evidence instruction requiring the prosecution to prove beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis other than that of guilt, his intent to sell marijuana, since no instruction on circumstantial evidence is necessary where intent alone is sought to be proved by circumstantial evidence. *Jones v. State*, 635 So. 2d 884 (Miss. 1994).

In a prosecution for the sale of cocaine, the trial court did not err in refusing an instruction stating that even if the jury "strongly believe[d]" that the defendant committed the offense, he must be found not guilty if the State failed to prove beyond a reasonable doubt that he sold cocaine. *Moore v. State*, 631 So. 2d 805 (Miss. 1994).

When the prosecution bases its case solely on the testimony of an accomplice corroborated only by a confidential informant, it is mandatory that the trial judge grant a cautionary instruction regarding the testimony of the accomplice; thus, a conviction for sale of cocaine would be reversed for failure to grant a cautionary instruction regarding an accomplice's testimony where the State's only corroborating witness was a confidential informant. *Edwards v. State*, 630 So. 2d 343 (Miss. 1994).

The rule that a defendant must admit the offense with which he or she is

charged before being permitted to submit an entrapment instruction to the jury would be abolished; even if the defendant denies one or more of the elements of the crime, he or she is entitled to an instruction on the defense of entrapment whenever there is sufficient evidence from which a reasonable jury could find entrapment. *Hopson v. State*, 625 So. 2d 395 (Miss. 1993).

In a prosecution for possession of cocaine, the trial court properly refused to grant the "two-theory" circumstantial evidence instruction requested by the defendant since there was direct evidence of actual possession where a police officer testified that he saw the defendant throw a plastic bag to the ground, and a plastic bag containing cocaine was immediately seized in an area close to the defendant. *Givens v. State*, 618 So. 2d 1313 (Miss. 1993).

In a prosecution for possession of marijuana with intent to sell, the circuit court's acceptance of its own 2 proposed instructions and the 4 instructions proposed by the prosecution, and its refusal of 9 of the defendant's 10 requested instructions, did not constitute reversible error where the judge refused the defendant's proposed instructions because they were "repetitious" of those which had already been accepted. *Hemphill v. State*, 566 So. 2d 207 (Miss. 1990).

On trial of felony charge of conspiring to distribute more than one kilogram of marijuana, giving of instructions which would allow the jury to find defendants guilty based on acts in furtherance of the conspiracy without requiring a separate finding that they knowingly became a part of the agreement to commit the crime, while erroneous, did not require reversal, where defendants failed to object, and the deficiency of the instructions was cured by other instructions given. *Gray v. State*, 487 So. 2d 1304 (Miss. 1986).

15. Sentence.

Defendant's life sentence without parole for possession of less than 0.10 gram of cocaine in violation of Miss. Code Ann. § 41-29-139(c)(1)(A) was mandatory under the circumstances and did not arise solely from his conviction of possession of cocaine but based on his status as a habit-

ual offender under Miss. Code Ann. § 99-19-83. Furthermore, defendant's claim was procedurally barred because he did not address all three factors of the proportionality analysis. *Hudson v. State*, — So. 2d —, 2009 Miss. App. LEXIS 58 (Miss. Ct. App. Feb. 10, 2009).

Based upon defendant's plea, the trial court had the authority to sentence defendant up to sixty years in the custody of the Mississippi Department of Corrections (MDOC); the trial court sentenced defendant to fifteen years in the custody of the MDOC, with six years to serve, and the remaining nine years suspended, and as such, defendant's sentence was within the minimum and maximum sentences set forth by statute. *Sanchez v. State*, — So. 2d —, 2 So. 3d 780, 2009 Miss. App. LEXIS 65 (Miss. Ct. App. 2009).

Although a conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed, defendant's rights under the Sixth Amendment were violated because he did not receive a jury hearing on the issue of a thirty-year sentence enhancement, pursuant to Miss. Code Ann. § 41-29-142, for selling a controlled substance within 1,500 feet of a church. *Brown v. State*, 995 So. 2d 698 (Miss. 2008).

Defendant's sentence after he was convicted of the possession of cocaine, more than 10 grams, but less than 30 grams, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D), was proper because, although his sentenced might have seemed harsh in light of sentences received by others convicted of drug possession, his sentence fit within the statutory maximum and harsher sentences had been upheld for drug possession. *Williams v. State*, — So. 2d —, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008).

Because defendant's sentence of 60 years with 47 years to serve in the custody of Mississippi Department of Corrections fell within the statutory limits, as it was enhanced for his possession of a firearm while he possessed a Schedule II controlled substance, no further analysis under *Solem* was required and it was affirmed on appeal. *Barlow v. State*, — So. 2d —, 8 So. 3d 196, 2008 Miss. App. LEXIS 471 (Miss. Ct. App. 2008).

Defendant's life sentence for possession of cocaine and possession of marijuana was not cruel and unusual punishment because he met the requirements of the habitual offender statute under Miss. Code Ann. § 99-19-83 in that he was also convicted of two separate prior felonies, one of which was a violent crime, and he served more than a year for each. *Jenkins v. State*, 997 So. 2d 207 (Miss. Ct. App. 2008).

Trial court properly denied defendant's motion for post-conviction relief after defendant pled guilty to the sale of cocaine where Miss. Unif. Cir. & County Ct. Prac. R. 8.04(A)(4) did not require that the trial judge inform defendant that defendant had the right to appeal the sentence; in any event, defendant's eight-year sentence was well below the 30-year maximum sentence for the sale of cocaine under Miss. Code Ann. § 41-29-139(b)(1). *Coleman v. State*, 979 So. 2d 731 (Miss. Ct. App. 2008).

Appellant's sentence was not grounds for post-conviction relief because appellant's sentence fell well within the statutory limits for the sale of cocaine, under Miss. Code Ann. § 41-29-139(b)(1), because appellant received a lenient sentence of only fifteen years on each count, with five years suspended on each count, and he was fined \$ 5,000 for each count, which was all suspended except for \$ 1,000 plus court costs. *Miller v. State*, 973 So. 2d 319 (Miss. Ct. App. 2008).

Where appellant was convicted of the unlawful sale of cocaine, the trial court denied his motion to reconsider his thirty-year sentence imposed under Miss. Code Ann. § 41-29-139(b)(1). No first-time offender exception was available, because appellant was charged with selling cocaine. *Alexander v. State*, 979 So. 2d 716 (Miss. Ct. App. 2007).

Circuit court was within its discretion in sentencing a defendant who pleaded guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139 to 12 years instead of 8 years, as the State had recommended, because 12 years was within the statutory range and the defendant showed disrespect to the court by appearing late and intoxicated at sentencing. *Smith v. State*, 973 So. 2d 1003 (Miss. Ct. App. 2007).

In a sale of cocaine case, defendant's 60-year sentence was not excessive because it was well within the statutorily proscribed limits, the trial judge noted that defendant had sold cocaine to a buyer over 100 times, and the gas station at which defendant sold cocaine was within walking distance of a school. *Phinizee v. State*, 983 So. 2d 322 (Miss. Ct. App. 2007).

Defendant who pleaded guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139(b) and was sentenced to 30 years' imprisonment was not subject to an excessive sentence because that allegation was founded on his mistaken belief that he should have been sentenced for mere possession of cocaine under Miss. Code Ann. § 41-29-139(c). *Morgan v. State*, 966 So. 2d 204 (Miss. Ct. App. 2007).

Where a grand jury indicted appellant for the crime of selling methamphetamine in violation of Miss. Code Ann. § 41-29-139(a)(1), appellant entered a plea of guilty to this charge; where appellant was sentenced to 30 years imprisonment, with 20 years suspended, leaving ten years to serve, he was not entitled to post-conviction relief. *Carroll v. State*, 963 So. 2d 44 (Miss. Ct. App. 2007).

Where appellant entered a guilty plea to possession of cocaine with intent and possession of cocaine in violation of Miss. Code Ann. § 41-29-139, the offenses were not included on the list of offenses not eligible for the intensive supervision and house arrest program under Miss. Code Ann. § 47-5-1003; the trial court's imposition of a 25-year sentence in intensive supervision was not an illegal sentence. *Moore v. State*, 976 So. 2d 930 (Miss. Ct. App. 2007).

Petition for postconviction relief was denied because there was no Eighth Amendment violation based on a 14-year sentence given for a violation of Miss. Code Ann. § 41-29-139 where the maximum sentence was 30 years; there was no inferences of a grossly disproportionate sentence when defendant's sentence was compared to the crime that he committed, and the factors in *Solem v. Helm*, 463 U.S. 277 (1983), were not considered because no evidence was presented to require such. *Moody v. State*, 964 So. 2d 564 (Miss. Ct. App. 2007).

Defendant had not established that he received ineffective assistance of counsel when counsel advised defendant to plead guilty so that the state would recommend a sentence of 12 years' imprisonment for the sale of cocaine, because counsel properly advised defendant that the potential sentence for the sale of a controlled substance was zero to 30 years under Miss. Code Ann. § 41-29-139; counsel was not required to advise defendant of the eight-year maximum sentence set forth in § 41-29-139(c)(1)(B) because that sentence pertained only to the possession of a controlled substance, not to the sale of it. *Dunlap v. State*, 956 So. 2d 1088 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly denied in a case where defendant pled guilty to the sale of cocaine under Miss. Code Ann. § 41-29-139(a) since his 20-year sentence was not illegal; because he was a habitual offender, defendant should have actually received a mandatory 30-year sentence. *Rucker v. State*, 955 So. 2d 958 (Miss. Ct. App. 2007).

Where appellant pled guilty to the manufacture of methamphetamine, he was sentenced to 22 years as permitted by Miss. Code Ann. § 41-29-139(b)(1); the post-conviction court found that the sentence was not disproportionate to the crime and correctly dismissed his petition without a hearing. *Sellers v. State*, 963 So. 2d 1183 (Miss. Ct. App. 2007).

Defendant faced a possible 30-year sentence for the sale of cocaine, and his sentence of 20 years with ten suspended and five years post-release supervision was within the zero- to 30-year limits of the statute; thus, his sentence was within the discretion of the trial court. *Westbrook v. State*, 953 So. 2d 286 (Miss. Ct. App. 2007).

Defendant's sentence after being convicted of the sale of marijuana within a correctional facility was appropriate because the maximum fine and the minimum sentence that he received were both within the statutory limits of Miss. Code Ann. § 47-5-198(3); it was clear that the circuit court was more than lenient in imposing house arrest against defendant because he benefited through what appeared to have been legislative oversight

as well as significant judicial restraint because, if he had been convicted of merely selling controlled substances, he could not have been sentenced to house arrest. *Jackson v. State*, 962 So. 2d 649 (Miss. Ct. App. 2007).

In a case involving the sale of cocaine, defendant's rights under Miss. Const. Art. 3, §§ 14, 26, 28 and U.S. Const. Amends. 5, 6, 8, and 14 were not violated by the maximum 30-year sentence; the sentence imposed was within the statutory limitation and was within the sound discretion of the trial judge. *Johnson v. State*, 950 So. 2d 178 (Miss. 2007).

Due to the fact that defendant had pled guilty to charges relating to the sale of methamphetamine, he was not eligible for parole since that crime was excepted from Miss. Code Ann. § 47-7-3; therefore, a motion for post-conviction relief was properly denied. *Heafner v. State*, 947 So. 2d 354 (Miss. Ct. App. 2007).

Defendant convicted of selling cocaine was sentenced to twenty-five years in prison with five years suspended. Because defendant's sentence was within the statutory guidelines, the sentence was not grossly disproportionate to the crime. *Williams v. State*, 936 So. 2d 387 (Miss. Ct. App. 2006).

Petition for post-conviction relief was procedurally barred due to being filed five years after a guilty plea because the intervening case of *Blakely v. Washington*, 542 U.S. 296, 159 L. Ed. 2d 403 (2004) did not apply since the sentence imposed was within the range allowed. *Glenn v. State*, 940 So. 2d 969 (Miss. Ct. App. 2006).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon; because he had been twice previously convicted of felonies, and sentenced to separate terms of at least one year, the maximum base term of imprisonment for possession, eight years under Miss. Code Ann. § 41-29-139(c)(1)(B), Miss. Code Ann. § 99-19-81, applied; because he also possessed a firearm, that sentence was doubled to 16 years, and because he had been previously convicted of a drug offense, the trial judge doubled the sentence

again to arrive at a 32-year sentence. *Mosley v. State*, 930 So. 2d 459 (Miss. Ct. App. 2006).

Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. *White v. State*, 921 So. 2d 402 (Miss. Ct. App. 2006).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and possessed a small amount of methamphetamine, the trial judge had discretion under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. *Passman v. State*, 937 So. 2d 17 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

Appellate court affirmed the sentences imposed under Miss. Code Ann. § 41-29-139; the sentencing range for the sale of the hydrocodone was for not more than 30 years, and the sentencing range for the sale of less than one ounce of marijuana was not more than three years. Thus, the 22 year sentence on the conviction of the sale of the hydrocodone and the three year sentence on the sale of the marijuana were proper. *Westbrook v. State*, 928 So. 2d 186 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923 (Miss. 2006).

Penalties set forth in the armed robbery statute, Miss. Code Ann. § 97-3-79, and the controlled substances statute, Miss.

Code Ann. § 41-29-139, were clearly distinguishable where the specific requirement that a trial court's sentence be limited to a definite term, reasonably expected to be less than life, was applicable to an armed robbery conviction but did not apply to all crimes; therefore, the trial court did not have to consider defendant's life expectancy for the conviction of unlawful delivery of methamphetamine and unlawful possession of more than thirty grams of methamphetamine with intent to distribute. *Cannon v. State*, 919 So. 2d 913 (Miss. 2005).

Court rejected defendant's claim that the enhanced 10-year sentence imposed pursuant to Miss. Code Ann. § 41-29-142 upon his conviction for selling cocaine within 1,500 feet of a church in violation of Miss. Code Ann. § 41-29-139 was excessive. A pre-sentencing report was included in the record and the 10-year sentence was considerably less than the 30-year maximum provided in § 41-29-139, and defendant's sentence was well within the enhancement guidelines provided in Miss. Code Ann. § 41-29-142, which allowed a sentence of up to three times the sentence imposed under Miss. Code Ann. § 41-29-139. *Moore v. State*, 909 So. 2d 77 (Miss. Ct. App. 2005).

Defendant's 35-year enhanced sentence for selling cocaine was not excessive as the sentence imposed fell within the statutory range of available sentences: defendant was sentenced to serve 35 years, and the Miss. Code Ann. §§ 41-29-139 (b)(1), -147 provided for a maximum sentence of up to 60 years. *McDougle v. State*, 918 So. 2d 768 (Miss. Ct. App. 2005).

In a case where defendant was convicted of two counts of possession with intent to distribute and sentenced as an habitual offender, because the trial judge could consider societal concerns during sentencing, and because the judge did not exceed the maximum penalties, the trial judge did not err in sentencing defendant to 30 years for each count. *Cannon v. State*, 918 So. 2d 734 (Miss. Ct. App. 2005).

Where defendant rejected a plea bargain that had offered a more lenient sentence for the sale of cocaine, and upon conviction at trial, was sentenced to a

greater sentence of 30 years in the custody of the Mississippi Department of Corrections, with the last 15 years suspended under prescribed conditions, there was no constitutional violation where the trial court had stayed aloof from the plea bargaining process and based its decision on a pre-sentence report, and where defendant's sentence was within the statutory guidelines. *Rogers v. State*, 891 So. 2d 268 (Miss. Ct. App. 2004).

Even if defendant was convicted of possession only of the marijuana found in the first package detained in El Paso, 4.5937 kilograms, and not convicted of the cumulative weight of both packages, he would still have been required to serve a sentence of 6 to 24 years, Miss. Code Ann. § 41-29-139(c)(2)(F); the sentence he received of 22 years was within the statutory limit. *Ramirez v. State*, 883 So. 2d 138 (Miss. Ct. App. 2004).

Since defendant could not be found guilty of both possession and sale of cocaine (due to merger), the sentencing order should have reflected the jury's verdict on the sale charge only. If the judge considered the possession conviction in determining defendant's sentence, that was also improper; in order to ensure that defendant was sentenced only on the sale conviction, the appellate court reversed his sentence and remanded for a corrected sentencing order. *Edwards v. State*, 878 So. 2d 1106 (Miss. Ct. App. 2004).

Defendant, who went to trial on a charge of sale of cocaine, argued that his sentence was disproportionate to the sentence a co-defendant received. However, his co-defendant had pleaded guilty and that was a reason for receiving a lesser sentence. Thus, defendant's sentence of 30 years with 12 years suspended (albeit remanded for correction because of a merger issue), was not disproportionate to his co-defendant's sentence of 16 years for the same offense. *Edwards v. State*, 878 So. 2d 1106 (Miss. Ct. App. 2004).

Defendant who pleaded guilty to possession of cocaine was properly sentenced to 20 years in the Mississippi Department of Corrections. *Graves v. State*, 872 So. 2d 760 (Miss. Ct. App. 2004).

Denial of postconviction relief was affirmed because the imposition of a 15-year

sentence for the offense of transfer of cocaine was well within the 60-year maximum sentence. The offense of transfer of cocaine carried a maximum penalty of 30-years in prison, the enhanced penalty statute allowed the sentence to be doubled where a defendant's conviction was a second or subsequent drug offense, and because it was the inmate's fourth drug conviction, his sentence could be doubled. *Falconer v. State*, 873 So. 2d 163 (Miss. Ct. App. 2004).

Defendant's sentence after pleading guilty to one count of sale of a controlled substance and one count of conspiracy was proper where his sentence was only one-fifth of the maximum permitted, Miss. Code Ann. §§ 41-29-139(b)(1), 97-1-1(h); further, he failed to object to the sentence imposed upon him by the trial court and was attempting to attack his conspiracy and sale convictions in one post-conviction filing that was not permitted, Miss. Code Ann. § 99-39-9(2), therefore, his claim was not properly presented and was procedurally barred. *McMinn v. State*, 867 So. 2d 268 (Miss. Ct. App. 2004).

Trial court's decision not to give defendant a "volume discount" but to impose 30- and 20-year consecutive sentences in two separate drug sale cases was proper, as the sentences were within the legal limits and were not grossly disproportionate. *Heatherly v. State*, 864 So. 2d 1036 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

Where defendant was sentenced to consecutive sentences of 60 years for the sale of cocaine and 32 years for the possession of a certain quantity of cocaine, the sentences were within the limits of those set out by the Mississippi Legislature and, under the circumstances of the case, where defendant fit plainly within the category of repeat drug offender, since all

his convictions shown in the record related to narcotic possession or narcotic trafficking, the sentences were not so unreasonably harsh as to invoke constitutional considerations of cruel and unusual punishment. *Wright v. State*, 863 So. 2d 1005 (Miss. Ct. App. 2004).

Defendant's sentence of eight years with two years suspended and a fine of \$20,000 was well within the maximum limits set by Miss. Code Ann. § 41-29-139. *Ford v. State*, 844 So. 2d 496 (Miss. Ct. App. 2003).

Sentence imposed for the sale of marijuana was not excessive or disproportionate because the sentence was within the limits set forth by Miss. Code Ann. § 41-29-147; Miss. Code Ann. § 41-29-139 did not apply because defendant was a second or subsequent offender. *Fields v. State*, 840 So. 2d 796 (Miss. Ct. App. 2003).

A sentence of 3 years and a \$ 3,000 fine was not excessive and thus grossly disproportionate to the crime committed, i.e., the sale of less than one ounce of marijuana, as there was no association between the charge at issue and previous crimes for which the defendant was already being punished. *Heatherly v. State*, 773 So. 2d 405 (Miss. Ct. App. 2000).

A sentence of thirty years in the custody of the Department of Corrections without the possibility of parole for the sale of cocaine did not constitute cruel and unusual punishment where the defendant was a habitual offender with prior convictions for burglary, grand larceny, and cocaine possession. *Boyd v. State*, 767 So. 2d 1032 (Miss. Ct. App. 2000).

Applying the rationale in *Stromas v. State*, 618 So. 2d 116 (Miss. 1993), the sentence was not grossly disproportionate where defendant received less than the maximum sentence and less than the maximum fine. *Robert v. State*, 756 So. 2d 806 (Miss. Ct. App. 1999).

The defendant was properly sentenced for a felony, rather than a misdemeanor where he was convicted of possession of methamphetamine and cocaine under subsection (c)(1)(A) of this section. *Alexander v. State*, 749 So. 2d 1031 (Miss. 1999).

The imposition of a 30 year sentence and accompanying \$10,000 fine for the sale of cocaine in violation of § 41-29-139

was not unconstitutionally disproportionate where the sentence was less than the maximum allowable under the statute, notwithstanding the defendant's previously clean criminal record and the meager amount of cocaine involved. *Cook v. State*, 728 So. 2d 117 (Miss. Ct. App. 1998).

Sentences of 20 years for conspiracy to sell controlled substance and 30 years on each of two counts of sale of controlled substance, all to run consecutively, did not constitute cruel and unusual punishment, given defendant's extensive juvenile record that began when he was ten years old. *Herring v. State*, 691 So. 2d 948 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Habitual offender sentence imposed on defendant convicted of possession of cocaine with intent to deliver, requiring defendant to pay \$30,000 fine and to serve 30 years without possibility of early parole, was not excessive and did not constitute cruel and unusual punishment: applicable sentencing statute allowed fines of \$1,000 to \$1 million and prison terms of up to 30 years. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996).

Defendant could not be sentenced to greater penalty than 5 years and/or \$5,000 fine as allowed under general conspiracy statutory provision, and could not be sentenced for conspiracy as first-offender to sell greater than one ounce but less than one kilogram of marijuana, despite defendant's involvement in sale of more than one ounce but less than one kilogram of marijuana, where indictment as to charged conspiracy was silent as to quantity of marijuana involved. *Clubb v. State*, 672 So. 2d 1201 (Miss. 1996).

A defendant's sentence was not disproportionate to the crime and did not amount to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution where he was convicted of possession of marijuana with intent to deliver or distribute and was sentenced to serve 20 years in the custody of the Mississippi Department of Corrections and ordered to pay a \$250,000 fine, since the sentence was less than the maximum 30 years imprisonment and one million dollar fine authorized by § 41-29-

139(b)(1). *Hart v. State*, 639 So. 2d 1313 (Miss. 1994).

In a prosecution for the sale of cocaine in violation of § 41-29-139, in which the defendant was convicted and sentenced as a habitual offender to 30 years imprisonment, the evidence was sufficient to prove that the defendant was a habitual offender under § 99-19-81 where the defendant had previously pled guilty to the sale of less than one ounce of marijuana on 2 separate occasions for which he had received a 3-year suspended sentence and a one-year sentence, and certified copies of the indictments and sentencing orders in these prior cases were introduced into evidence at the sentencing hearing. *Moore v. State*, 631 So. 2d 805 (Miss. 1994).

A trial court's failure to inform a defendant, who pled guilty to possession of cocaine with intent to distribute, that a \$1,000.00 fine was the minimum penalty for the crime was harmless error where the record contained the defendant's written waiver of indictment, his petition to enter a plea of guilty, and a 12-page transcript of the circuit judge's interrogation of the defendant before accepting the plea. *Eley v. State*, 631 So. 2d 787 (Miss. 1994).

A 60-year sentence for a conviction of sale of cocaine did not violate the Eighth Amendment's prohibition against cruel and unusual punishment, even though the defendant was convicted of selling only a small amount of cocaine, where the defendant was given a 30-year sentence pursuant to § 41-29-139(b)(1) for his conviction and the sentence was then doubled pursuant to § 41-29-147 because the defendant had previously been convicted of possession of marijuana, since the sentence was within the statutory guidelines and the legislature has called for stiff penalties for drug offenders as a matter of public policy. *Campbell v. Campbell*, 618 So. 2d 116 (Miss. 1993).

The imposition of a 25-year sentence for the crime of possession of 5.7 grams of cocaine with intent to distribute did not constitute a denial of the defendant's constitutional rights on the ground that it was excessive and disproportionate where the defendant did not produce facts concerning sentences imposed on other criminals, the sentence was within the limits

fixed by § 41-29-139(b), and the sentence was not "grossly disproportionate" or "shockingly excessive." *Edwards v. State*, 615 So. 2d 590 (Miss. 1993).

In a prosecution for possession of cocaine with intent to distribute, the trial court did not err in failing to order a presentence report, thus prohibiting the defendant from offering mitigating circumstances for the court's consideration prior to imposition of sentence, since presentence investigations and reports are discretionary with the trial judge and not mandatory. *Edwards v. State*, 615 So. 2d 590 (Miss. 1993).

A trial court did not err in sentencing a defendant who was convicted of distributing a controlled substance to 25 years' imprisonment and fining him \$500,000 since the sentence was correctly fixed within the realm of § 41-29-119 and therefore was not disproportionate to the crime charged. *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

A circuit court's summary denial and dismissal of a defendant's motion for post-conviction collateral relief was not error where the defendant asserted that he entered a guilty plea under the advice and belief that the maximum sentence which could be imposed under the indictment was 20 years so that his 30 year sentence was improper, the maximum sentence which could be imposed under the indictment, which charged the defendant with possession of more than one kilogram of marijuana with intent to distribute and recidivism, was 30 years without parole or probation, and the transcript of the plea colloquy between the trial court judge and the defendant belied the defendant's claim of a 20-year plea bargain. *Turner v. State*, 590 So. 2d 871 (Miss. 1991).

The imposition of a sentence of 40 years imprisonment and a \$50,000 fine pursuant to § 41-29-139(b)(1) for possession of marijuana was error where the defendant was a first offender and had no prior felony record, so that the maximum penalty which could be imposed was 20 years imprisonment and/or a maximum fine of \$30,000 as set forth in § 41-29-139(b)(2). *Ivy v. State*, 589 So. 2d 1263 (Miss. 1991).

The imposition of a \$50,000 fine upon a conviction for the sale of 4 ounces of mar-

ijuana was error because it was in excess of the fine authorized by § 41-29-139(b)(2). *Jones v. State*, 564 So. 2d 848 (Miss. 1990).

A sentence of 15 years' imprisonment and a \$9,000 fine for conviction of sale of cocaine was within the provisions of the statute and within the sound discretion of the trial judge, and did not constitute cruel and inhuman punishment. *Bradley v. State*, 562 So. 2d 1276 (Miss. 1990).

When jury convicts defendant of possession of cocaine with intent to transfer and trial judge concludes that evidence, both direct and circumstantial, fails to show intent or attempt to transfer, trial judge properly sentences defendant as though defendant had been convicted of lessor included offense of possession alone. *Garvis v. State*, 483 So. 2d 312 (Miss. 1986).

Where defendant had been convicted of knowingly and intentionally selling a controlled substance, a sentence of ten years was well within the statutory limits of § 41-29-139; a trial court will not be held in error or held to have abused discretion if the sentence imposed is within the limits fixed by the statute. *Johnson v. State*, 461 So. 2d 1288 (Miss. 1984).

Where an indictment did not specify the amount of marijuana in defendant's possession, and defendant could have been indicted under either § 41-29-139(b)(2), providing for a sentence of 20 years imprisonment and a \$30,000 fine for possession of less than a kilogram but more than an ounce of marijuana, or § 41-29-139(b)(3), providing for a sentence of three years and a \$3,000 fine for possession with intent to deliver one ounce or less of marijuana, a sentence of 20 years imprisonment and a fine of \$10,000 was excessive, and the maximum sentence allowed would be imprisonment for three years and a fine of \$3,000. *Burns v. State*, 438 So. 2d 1347 (Miss. 1983).

The maximum sentence that may be imposed for possession of amphetamine is one year or \$1,000 or both; therefore, since the two year sentence imposed upon appellant was in excess of that allowed by law, the case was remanded to the lower court for resentencing within the statutory limits. *Guynes v. State*, 300 So. 2d 452 (Miss. 1974).

Where the maximum penalty under § 41-29-139(c)(2) for the offense of which the defendant is convicted is imprisonment for 20 years or a fine of \$30,000, or both, a sentence of 5 years imprisonment is not an abuse of the court's discretion, notwithstanding that at time of his conviction defendant was 19 years of age and a first offender. *Boone v. State*, 291 So. 2d 182 (Miss. 1974).

Since marijuana is not a narcotic drug, the applicable section as to the penalty for a sale of marijuana is Code 1942 § 6831-70(a)(2) which allows a maximum term of imprisonment of 4 years and a fine of \$2,000, and a sentence of 5 years in the state penitentiary and a \$1,000 fine would be reversed and remanded for proper sentencing. *Ladnier v. State*, 273 So. 2d 169 (Miss. 1973).

Lysergic Acid Diethylamide belongs to the class of hallucinogens which is not a narcotic drug, so that a defendant who was sentenced to five years in the state penitentiary upon conviction of a sale of Lysergic Acid Diethylamide was sentenced to a year more than authorized by statute. *Fisher v. State*, 264 So. 2d 832 (Miss. 1972).

Possession of marijuana is only a misdemeanor; a defendant convicted of possession of marijuana and sentenced to 3 years in the state penitentiary and a fine of \$1000 must be resentenced. *Holland v. State*, 263 So. 2d 566 (Miss. 1972).

IV. EVIDENCE.

16. Evidence: In general.

Evidence, including testimony from a police officer and a confidential informant regarding a drug transaction, as well as a videotape of the transaction, did not preponderate heavily against the jury's decision finding defendant guilty of selling cocaine. *Hoye v. State*, — So. 2d —, 1 So. 3d 946, 2009 Miss. App. LEXIS 33 (Miss. Ct. App. 2009).

Appellate court was unable to find from the record that the jury verdict finding defendant guilty of selling cocaine in violation of Miss. Code Ann. §§ 41-29-139(a)(1), 41-29-139(b)(1) was contrary to the overwhelming weight of the evidence because: (1) the fact that an agent and the informant were inconsistent in describing

the amount of time and the extent of the agent's search of the informant before the controlled drug buy was a matter for jury determination as to credibility; (2) a jury could reasonably conclude from the totality of the credible evidence that since the informant entered the trailer with \$ 40 and exited with crack cocaine and \$ 10 in change, it was crack cocaine that defendant placed on the coffee table, even though the hands of defendant and the informant were not visible in the video and the video did not show defendant giving drugs or change to the informant; (3) defendant cited no authority for his argument that the informant's testimony was not credible because of his prior criminal history; and (4) the length of defendant's sentence was irrelevant to the issue of whether the jury verdict was against the overwhelming weight of the evidence. *Miller v. State*, 980 So. 2d 927 (Miss. 2008).

State presented sufficient evidence to find beyond a reasonable doubt that defendant was guilty of each element of the crime of manufacturing marijuana; defendant admitted that the marijuana plants found in the woods were his and the forensic analysis report confirmed that the plants and substances recovered from the woods and defendant's residence were indeed marijuana. *Williams v. State*, 971 So. 2d 581 (Miss. 2007).

Trial court did not err in denying defendant's motion for a new trial where he was convicted of the sale or transfer of cocaine. It was clear that after receiving the testimony from both a confidential informant (CI), who purchased the drugs, and defendant, that the jury found the CI's testimony more credible; further, an audio tape of the transaction and the testimony of a police officer who prepared the informant, and listened to the transaction, also provided sufficient evidence to sustain defendant's conviction. *Kelly v. State*, 910 So. 2d 535 (Miss. 2005).

Informant who cooperated with the police in making the controlled buy testified that she had known defendant for two years, that she saw him just about every day in the area, and the record reflects that the informant identified defendant at trial as the person who sold her the co-

caine. The record also showed that the jury viewed the videotape of the drug transaction; the question of the informant's credibility was for the jury to resolve, the verdict was not against the overwhelming weight of the evidence, and defendant's motion for a directed verdict was properly denied. *Doss v. State*, 906 So. 2d 836 (Miss. Ct. App. 2004).

Both defendant and the confidential informant (CI) testified that defendant asked the CI if he worked for law enforcement, and that the CI replied that he did not. Based on Mississippi precedent, the CI's actions were not improper and defendant's attempt to attack the CI's credibility on that basis failed. Defendant's other arguments as to the credibility of the CI, relating to the CI's past record and his payment from law enforcement for making the controlled buys was for the jury to determine, and given the videotape and other evidence, defendant's motion for a new trial was properly denied. *Dunlap v. State*, 883 So. 2d 145 (Miss. Ct. App. 2004), cert. dismissed, 893 So. 2d 1061 (Miss. 2005).

Confidential informant's testimony was not the sole testimony relied upon in identifying defendant as the person who sold the substance to the first agent, as the first agent testified that defendant was the person who sold the cocaine, a second agent testified to recognizing the voices of the first agent and the informant over the transmitter, and a local officer testified to recognizing defendant's voice over the transmitter; thus, defendant's argument that the evidence was insufficient to sustain defendant's conviction was rejected, and a new trial was properly denied. *Price v. State*, 865 So. 2d 408 (Miss. Ct. App. 2004).

Where defendant testified on direct examination that defendant had not sold drugs, that defendant was not a drug dealer, and that defendant had a prior drug conviction that had been overturned, defendant opened the door to the State's admission for use as impeachment evidence of three prior videotaped drug sales for which defendant had been charged. *Pulliam v. State*, 873 So. 2d 124 (Miss. Ct. App. 2004).

Informant was properly allowed to comment on the videotape of the drug sale

during the trial because the informant had firsthand knowledge of the events transpiring in the video, and there was no invasion of the province of the jury. *Pulliam v. State*, 873 So. 2d 124 (Miss. Ct. App. 2004).

Since defendant pleaded guilty, he waived his opportunity for a jury to review the sufficiency of evidence in his case; thus, the appellate court also declined to review. *Smith v. State*, 845 So. 2d 730 (Miss. Ct. App. 2003).

Where defendant was tried for the sale of cocaine in a church zone, and an officer testified, and referred to defendant's co-defendant (whose case was severed) as being a "Columbian," any prejudicial error, from the fact Columbia was a country of known drug cartels, was harmless in light of other evidence which overwhelmingly supported the jury's verdict, and defendant was not entitled to a mistrial. *Williams v. State*, 856 So. 2d 571 (Miss. Ct. App. 2003), cert. denied, en banc, 860 So. 2d 1223 (Miss. 2003).

Defendant argued the evidence was insufficient, because the informant was a convicted felon with pending felony charges against him; however, two officers who monitored the transaction also testified, and the jury was informed of the informant's situation; thus, the jury could weigh the testimony accordingly, and the evidence was sufficient to sustain defendant's conviction. *Williams v. State*, 856 So. 2d 571 (Miss. Ct. App. 2003), cert. denied, en banc, 860 So. 2d 1223 (Miss. 2003).

Trial court was misled by both the State and the defense with respect to the cut-off point for misdemeanor and felony possession; however, this was insignificant because no reasonable, hypothetical juror could have found from the evidence that defendant possessed exactly 30.0 grams, no more and no less. *Bailey v. State*, 837 So. 2d 228 (Miss. Ct. App. 2003).

Defendant waived an alleged discovery violation by failing to request a continuance after objecting to the admission of the evidence. *Prewitt v. State*, 755 So. 2d 537 (Miss. Ct. App. 1999).

Evidence of prior drug sales is admissible to show a defendant's intent to distribute drugs in his or her possession, so long

as it "passes muster" under Rule 403, Miss. R. Ev. and is accompanied by a proper limiting instruction. *Smith v. State*, 656 So. 2d 95 (Miss. 1995).

While evidence of prior drug transactions is admissible on the issue of a defendant's intent to distribute drugs in his or her possession, such evidence alone is not sufficient to support a finding that the defendant had the intent to distribute. *Smith v. State*, 656 So. 2d 95 (Miss. 1995).

Under Rule 803(6), Miss. R. Ev., a custodian of the records of the Mississippi Crime Lab may introduce laboratory reports in a narcotics possession or sale case, except where the defendant objects on the ground that his or her Sixth Amendment right to confront the person who prepared the test is being violated. *Kettle v. State*, 641 So. 2d 746 (Miss. 1994).

In a prosecution for the sale of cocaine, the trial court committed reversible error by allowing State witnesses to testify concerning another alleged sale of cocaine for which the defendant had not been convicted, which was an attempt by the State to impeach the defendant's statement elicited on cross-examination that he had never sold cocaine, where no rebuttal was allowed by the court to refute the new evidentiary matter. *Reed v. State*, 637 So. 2d 194 (Miss. 1994).

There was sufficient probable cause to arrest a defendant for distribution of a controlled substance to an undercover informant, even though none of the arresting officers actually saw the drug transaction occur, where the conversation between the defendant and the undercover informant was being monitored by the officers during the transaction, the officers testified that they had surrounded the building in their cars to monitor the entrance and exit of anyone on the premises, the undercover informant gave the signal, "[t]his is good stuff" in order to alert the officers that the crime had occurred, and there was no one other than the defendant in close proximity to the informant when the officers arrived. *Rogers v. State*, 599 So. 2d 930 (Miss. 1992).

Where contraband is in an amount which a person could reasonably hold for personal use, other evidence of intent to

sell or deliver is necessary; evidence of involvement in the drug trade is relevant on the issue of intent. *Roberson v. State*, 595 So. 2d 1310 (Miss. 1992).

The quantity and nature of contraband may be sufficient to establish an intent to distribute; the State must prove that the amount possessed exceeds a personal consumption amount; each case must be adjudged on its own facts, but whatever the facts, the mere suspicion of intent cannot support a conviction, as the State must prove intent beyond a reasonable doubt. *Esparaza v. State*, 595 So. 2d 418 (Miss. 1992).

Proof of possession with an intent to distribute or sell should not be based solely upon surmise or suspicion. There must be evidentiary facts which will rationally produce in the minds of jurors a certainty, a conviction beyond reasonable doubt that the defendant did in actual fact intend to distribute or sell, not that the defendant might have had such intent. It must be evidence in which a reasonable jury "can sink its teeth." *Stringfield v. State*, 588 So. 2d 438 (Miss. 1991).

If the quantity of the drug is not in itself sufficient to establish intent to distribute, the court will consider both the quantity and the nature of the controlled substance. Incriminating evidence indicating some involvement in the drug trade may also be considered. The evidence sufficient to infer intent to sell must be evaluated in each case. *Jackson v. State*, 580 So. 2d 1217 (Miss. 1991).

In a prosecution for distribution of a controlled substance, a witness' pluralization of the word "indictment" was an isolated, inadvertent reference to other crimes which would be deemed "without substantial prejudice to the rights of [the defendant] to a fair trial." *Davis v. State*, 568 So. 2d 277 (Miss. 1990).

Although the case was required to be reversed and remanded for failure of prosecution to disclose name of witness, and because the trial judge refused to grant continuance to enable defense to find witness, testimony of narcotics enforcement personnel supported jury's verdict of guilty of selling a controlled substance. *Turner v. State*, 501 So. 2d 350 (Miss. 1987).

The mere fact that there is an even balance of one witness for the prosecution and one witness for the defense in trial of a charge of sale of a controlled substance does not prevent the jury from weighing the credibility of each witness, and in deciding the issue of guilt. *Brown v. State*, 499 So. 2d 775 (Miss. 1986).

Both the quantity of the contraband seized, as well as its nature, will determine whether there is sufficient circumstantial evidence to sustain a conviction of possession of marijuana with intent to distribute. *Coyne v. State*, 484 So. 2d 1018 (Miss. 1986).

Evidence of discovery of controlled substances on defendant's person, in defendant's residence, and in defendant's automobile is sufficient to support conviction for possession. *Dixon v. State*, 465 So. 2d 1092 (Miss. 1985).

Evidence of substantial knowing participation in consummation of sale of marijuana or in arranging for sale is sufficient to support conviction for sale of unlawful controlled substance. *Williams v. State*, 463 So. 2d 1064, 57 A.L.R.4th 633 (Miss. 1985).

17. Admissibility — generally.

Trial court did not abuse its discretion in admitting cocaine bags into evidence where they were introduced to prove that what was sold to an undercover officer was a controlled substance under Miss. Code Ann. § 41-29-139(a)(1). *Turner v. State*, 950 So. 2d 243 (Miss. Ct. App. 2007).

Trial court did not abuse its discretion in admitting the transcriptions of audiotapes of the drug purchases where the appellant had not offered his own versions of the tapes for the jury to evaluate. *Turner v. State*, 950 So. 2d 243 (Miss. Ct. App. 2007).

Defendant's conviction and sentence for possession of controlled dangerous substance, cocaine, in violation of Miss. Code Ann. § 41-29-139 was affirmed when the state's introduction of a photograph, which included marijuana and violated a pretrial order that the state would not divulge evidence of marijuana to the jury, did not constitute a reversible error when defendant failed to timely object to the introduction of the photograph, failed to include his motion for a mistrial in the

record, and failed to correct omissions in the record pursuant to Miss. R. App. P. 10(c) to address his claim that he was denied a meaningful appeal. *Hales v. State*, 933 So. 2d 962 (Miss. 2006).

Where defendant was convicted of possession of cocaine with intent to sell, the trial court had not erred by refusing to admit into evidence the transcript of defendant's nephew's guilty plea hearing because of defendant's lack of effort to secure his nephew's attendance until late afternoon on the first day of trial, thus he was not "unavailable" under Miss. R. Evid. 804(a)(5) and the plea transcript failed to meet the prior testimony hearsay exception contained in rule 804(b)(1). *Jones v. State*, 912 So. 2d 501 (Miss. Ct. App. 2005).

Where city officer investigated defendant's parked vehicle outside the city limits, no crime was committed in the officer's presence or jurisdiction, and even if the officer had been authorized to do a pat-down search for weapons under *Terry v. Ohio*, the officer's identification of a small "knot-like nudge" was unreasonable. The continued exploration of defendant's pockets after determining that no weapon was present amounted to the sort of evidentiary search that *Terry* expressly refused to authorize, and therefore, the trial court erred in failing to suppress the methamphetamine found as a result of the officer's unlawful search. *McFarlin v. State*, 883 So. 2d 594 (Miss. Ct. App. 2004).

Evidence of alcoholic beverages, failing to yield to blue lights, resisting arrest and reckless driving could be admitted, in prosecution for possession with intent to distribute cocaine, as purpose of evidence was not to establish conformity with crime charged, since testimony related only events which occurred as part of criminal episode for which defendants were arrested. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Defendant waived appellate review of his claim that trial court erred in allowing evidence of marijuana and syringes at his trial for possession of methamphetamine; in his objection at trial, defendant complained of relevancy of marijuana to methamphetamine charge, but on appeal, his claim was bottomed on prejudicial effect of

introduction of evidence on jury's decision. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

Evidence of marijuana and syringes found at same time, same place, and in same bag as illegal substance (methamphetamine) listed on indictment form was admissible in prosecution for possession of methamphetamine; marijuana and syringes were interwoven or inseparable from charged offense, and defense counsel opened door for introduction of that evidence by hinting at its existence during voir dire. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

General rule is that introduction into evidence of unlawful substances not mentioned in indictment for possession of controlled substance is reversible error unless introduction was necessary for identity, intent or motive, and was not so interwoven with other crimes that it could not be separated. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

If defendant tells jury, judge and prosecution that defendant will raise proof of certain defense, judge and prosecution should be allowed to believe that defendant will indeed raise proof of that defense, and prosecution should be allowed to introduce evidence based on that belief which will rebut that defense. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996).

An additional quantity of a substance retained by the defendant after she sold cocaine to a confidential informant could not be used to support a conviction for possession of cocaine with intent to distribute, where there was no chemical analysis adequate to show that the substance retained was an illegal controlled substance. *Clayton v. State*, 582 So. 2d 1019 (Miss. 1991).

In a prosecution for sale of cocaine, photographs of the cocaine were properly allowed into evidence, where the cocaine was entirely consumed in the crime lab's chemical analysis, the prosecution properly qualified the photographs as depicting the substance purchased from the defendant, and there was no suggestion or inference in the record that the original substance was destroyed in bad faith. *Gibson v. State*, 580 So. 2d 739 (Miss. 1991).

A tape-recording made by an undercover agent on the evening of a sale of

marijuana was admissible in a prosecution for sale of marijuana, both for its incriminating contents and to establish that the accused and the undercover agent were present and together on the scene at the time in question. *Cockrell v. State*, 566 So. 2d 1243 (Miss. 1990).

A gun and a scale were admissible into evidence in a prosecution for possession of marijuana with intent to sell, where the gun and the scale were found in close proximity with the marijuana since weapons and scales are "tools of the drug trade," and therefore the gun and scale were relevant to the crime charged. *Hemphill v. State*, 566 So. 2d 207 (Miss. 1990).

Trial judge abused his discretion in excluding evidence that state's witness had borne child by friend of defendant, where such evidence was not far removed from defense of entrapment, and defendant sought to establish that state's witness was trying to "get him" because he was friend of alleged father of her child. *Pulliam v. State*, 515 So. 2d 945 (Miss. 1987).

Admission of videotape of drug transaction, or referring to it in opening statement, was not error, where admission of tape did not violate defendant's Fifth Amendment right to not testify against himself, and jury was cautioned that opening statements by attorneys were not evidence and would not be evidence until admitted by court; statement by defendant to undercover agent that his wife ran business for him, and showing of videotape reflecting that part of conversation on redirect examination, was admissible, despite contention by defendant that testimony on redirect examination was on matters not in evidence. *Crenshaw v. State*, 513 So. 2d 898 (Miss. 1987).

Defendant's motion to suppress should have been granted and contraband found in his automobile should not have been admitted at trial over defendant's objection, where his arrest, which was without warrant, preceded the discovery of marijuana in his automobile, and was made at time when officers had less than probable cause to arrest, was illegal. *Floyd v. State*, 500 So. 2d 989 (Miss. 1986), cert. denied, 484 U.S. 816, 108 S. Ct. 68, 98 L. Ed. 2d 32 (1987).

There was no merit in defendant's contention that the state laboratory's use of the entire amount of the controlled substance found in his possession deprived him of an independent analysis, and therefore the test results should not have been admitted into evidence at trial. *Hampton v. State*, 498 So. 2d 384 (Miss. 1986).

Admission into evidence, over defense objections, of several contraband substances not mentioned in indictment charging defendant with possession of meperidine was reversible error, where such introduction was not necessary to show identity, intent or motive, and was not so interwoven with the offense charged that it could not be separated. *Bolin v. State*, 489 So. 2d 1091 (Miss. 1986).

In prosecution for sale of more than one ounce of marijuana, testimony regarding prior sale of less than one ounce is admissible where 2 transactions take place within 20 minutes of each other and it is impossible to develop circumstances leading up to second sale without mentioning first sale. *Minor v. State*, 482 So. 2d 1107 (Miss. 1986).

In prosecution for sale of marijuana, testimony regarding defendant's involvement in prior marijuana sale is not admissible to establish truth of facts asserted in prosecution but is admissible where defendant has testified on direct examination, in response to question by own attorney, that he did not sell marijuana and had never sold marijuana to anyone at any time. *Quinn v. State*, 479 So. 2d 706 (Miss. 1985).

Evidence that defendant accused of sale of more than one ounce of marijuana has dealt in marijuana on other occasions and has participated in romantic relationship with woman contrary to prevailing community mores is inadmissible in prosecution for sale of marijuana. *Hughes v. State*, 470 So. 2d 1046 (Miss. 1985).

18. —Search and seizure.

Defendant's convictions for possession of cocaine with the intent to distribute and possession of cocaine were appropriate because, notwithstanding that defendant consented to the search of his vehicle, the use of narcotics-detection dogs during a

stop based on probable cause was not in violation of the Fourth Amendment; thus, his motion to suppress was correctly denied. *Jaramillo v. State*, 950 So. 2d 1104 (Miss. Ct. App. 2007).

Basis of the totality of circumstances began with an anonymous tip that drug activity was occurring, and the officer responded and confirmed the anonymous source's information and smelled marijuana when he approached the cars and determined that the smell was coming from defendant's car. Defendant had admitted to having a gun on his person, so the officer, for his protection, asked defendant to get out of the car, and when defendant was out of the car, the officer found, in plain view, a bag commonly used in drug transactions with what appeared to be marijuana residue inside it; thus, defendant's arrest was supported by probable cause, and the evidence seized pursuant to a search of his person incident to arrest was admissible. *Kennedy v. State*, 909 So. 2d 1128 (Miss. Ct. App. 2005).

Defendant's convictions for possession of cocaine with the intent to distribute and possession of cocaine were appropriate because, notwithstanding that defendant consented to the search of his vehicle, the use of narcotics-detection dogs during a stop based on probable cause was not in violation of the Fourth Amendment; thus, his motion to suppress was correctly denied. *Jaramillo v. State*, 950 So. 2d 1104 (Miss. Ct. App. 2007).

Officers' unannounced entry into a suspect's apartment to execute search and arrest warrants would be justified if they reasonably believed that a prior announcement would have placed them in peril, or would have produced an unreasonable risk of destruction of easily disposable narcotics evidence. *Wilson v. Arkansas*, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976 (1995).

Affidavit supporting application for warrant to search defendant's motel room, when excised of false information, was not by itself sufficient to establish probable cause for issuance of warrant, where affidavit provided merely that officer who was executing other warrant found defendant in possession of large quantity of currency and motel room key, and motel manager

verified that motel room was registered to defendant. *Petti v. State*, 666 So. 2d 754 (Miss. 1995).

Probable cause did not exist for issuance of warrant to search defendant's motel room based on information that defendant was present, with others, when drugs were purchased by confidential source, that defendant was present when police officers executed other warrant which yielded 4 grams of cocaine, and that officers found on defendant's person large amount of money and motel room key. *Petti v. State*, 666 So. 2d 754 (Miss. 1995).

In a prosecution for possession of crack cocaine, the search of an automobile was not valid as a search incident to an arrest for driving with a suspended license where the police officer searched the car after the defendant had been frisked, handcuffed and placed in the back seat of the officer's patrol car, and therefore the officer could have had no reasonable fear that the defendant might have had a weapon or could have been in a position to destroy incriminating evidence from the crime which led to his arrest. *Ferrell v. State*, 649 So. 2d 831 (Miss. 1995).

In a prosecution for possession of crack cocaine, the search of an automobile was not valid under the plain view exception to the search warrant requirement where the police officer entered the car to retrieve the keys, he saw an ordinary matchbox on the passenger seat and opened it to find only matches, and he then noticed another matchbox between the 2 front seats and opened it to find that it contained 9 rocks of crack cocaine; no incriminating evidence was visible at the time the officer entered the car, since the mere presence of a matchbox on the front seat of a car ordinarily cannot be termed an incriminating object in plain view. *Ferrell v. State*, 649 So. 2d 831 (Miss. 1995).

There are "degrees" of detainments which fall short of an arrest which requires probable cause; detainments which would become an arrest depending on the outcome of a pending investigation are permissible, though police officers do not have unlimited authority, and may not be clothed with the authority to detain where they are not diligently investigating in such a way which will resolve the matter.

Haddox v. State, 636 So. 2d 1229 (Miss. 1994), modified on denial of rehearing, 1994 Miss. LEXIS 323 (Miss. June 16, 1994).

It was permissible for a police officer to stop an automobile and detain the occupants until a warrant to search the car was obtained where the officer had "staked out" the highway based on phone calls from a confidential informant who had given him reliable information in the past, the officer was familiar with the occupants of the car and the informant had given him their names, and the car make, license plate, and ownership of the car were confirmed by the officer before he pulled the car over. *Haddox v. State*, 636 So. 2d 1229 (Miss. 1994), modified on denial of rehearing, 1994 Miss. LEXIS 323 (Miss. June 16, 1994).

In a prosecution for possession of a controlled substance, cocaine which had been discarded by the defendant was not the fruit of an illegal search and seizure, and was therefore properly admitted into evidence, since the defendant was not "seized or arrested" when he discarded the drugs where the defendant did not stop when police officers ordered him to do so for the purpose of checking his identification, and he threw down the cocaine while he was walking away from the officers; the defendant was not restrained or stopped at the time he discarded the cocaine, and therefore the cocaine was abandoned and not the fruit of an unlawful seizure or arrest. *Harper v. State*, 635 So. 2d 864 (Miss. 1994).

In a prosecution for the sale of cocaine to an undercover police officer, the trial court did not err in admitting into evidence currency seized from the defendant when he was stopped at a traffic light since the officers had probable cause to arrest the defendant without a warrant where one of the officers had videotaped the defendant earlier the same day in a drug sale transaction with other undercover officers, and the stop of the defendant for running a red light was lawful and a subsequent consensual search produced evidence justifying an arrest. *Curry v. State*, 631 So. 2d 806 (Miss. 1994).

A defendant did not have standing to object to a search of his sister's residence

and subsequent seizure of cocaine where the defendant resided elsewhere, did not possess a key to the house, did not have permission to "have the run of the place," and, aside from the familial relationship, was "little more than a babysitter." *Hopson v. State*, 625 So. 2d 395 (Miss. 1993).

Marijuana seized from a bundle of clothes which the defendant was carrying from her motel room constituted "fruit of the poisonous tree" and was therefore inadmissible, where an unlawful warrantless search of the motel room lead officers to set up a surveillance, during which the defendant exited the motel room with bundles of clothing from which the marijuana was seized. *Marshall v. State*, 584 So. 2d 437 (Miss. 1991).

At trial of a defendant charged with possession, with intent to distribute, of more than one kilogram of marijuana, evidence obtained by a warrantless search of the trunk of an automobile which had been stopped for speeding did not require suppression where state troopers, upon approaching stopped automobile, had observed marijuana seeds and parts and had detected odor of marijuana emanating from, passenger compartment. *Fleming v. State*, 502 So. 2d 327 (Miss. 1987).

Testimony of police officers as to a conversation in defendant's home between the defendant and a confidential informer, who was invited into the home, which was electronically transmitted to the officers by a transmitter concealed on the informer, was admissible in defendant's trial for illegal sale and possession of a controlled substance, notwithstanding that no search warrant had been issued. *Lee v. State*, 489 So. 2d 1382 (Miss. 1986).

19. —Hearsay.

Defendant's conviction for the sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1) was appropriate, in part pursuant to Miss. R. Evid. 801(c) because an audiotape of telephone conversations between a confidential informant and unknown persons was not offered for any purpose other than to corroborate the witnesses' testimony for the State that pre-buy conversations occurred between a confidential informant and unknown persons. Thus, its introduction into

evidence was appropriate. *Brown v. State*, 969 So. 2d 855 (Miss. 2007).

Testimony of police officer, during prosecution for possession with intent to distribute cocaine, regarding arrangements made by and through confidential informant for securing controlled substance was not hearsay. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

The evidence was sufficient to support a conviction for possession of marijuana with intent to deliver and possession of cocaine where a search of the defendant's mother's home revealed 2 large bags of marijuana in a bedroom closet in a paper bag which also contained the defendant's shoe, the shoe contained \$1,560, the defendant acknowledged owning the shoe, the search also revealed weighing scales in the same room, the defendant's purse contained marijuana and cocaine, the defendant acknowledged owning the purse and at one time acknowledged owning the marijuana in the purse, and the defendant had been at her mother's house frequently as evidenced by her car parked outside. *Esparaza v. State*, 595 So. 2d 418 (Miss. 1992).

In a prosecution for sale of cocaine, a police officer's testimony of a conversation between the defendant and a confidential informant, and between the defendant and the officer, in transacting the sale of cocaine was not hearsay because her testimony of this discussion was relating first-hand, relevant acts in the criminal offense; similarly, the testimony of two other police officers as to what they heard over a shortwave radio during the sale of cocaine was not hearsay since they were giving a first-hand account of what was said by the parties involved in the sale of the cocaine and this conversation was an ingredient of the crime. *McDavid v. State*, 594 So. 2d 12 (Miss. 1992).

Law enforcement officers who were not at the scene of a sale of a controlled substance to a law enforcement purchaser may be permitted to relate the conversation they heard via radio between the seller and the purchaser as corroboration of the purchaser's testimony of what was said, where the officer who saw and heard the seller talking first testifies what was said and such testimony is restricted to

what the officers heard rather than a characterization of what the conversation was about. *McDavid v. State*, 594 So. 2d 12 (Miss. 1992).

In a prosecution for sale of cocaine, it was error for the trial court to exclude the defendant's testimony as to what he heard the law enforcement purchaser, the confidential informant, and another party say during the sale of cocaine where the defendant claimed that he was an innocent spectator and that the other party was the seller, and therefore any testimony as to conversations between the parties at the scene of the sale transaction was not hearsay but was a first-hand eyewitness account. *McDavid v. State*, 594 So. 2d 12 (Miss. 1992).

In a prosecution for sale of cocaine, testimony concerning a conversation between the defendant and an undercover narcotics agent following the sale of cocaine, which involved an offer by the defendant to sell the agent cocaine in the future at a lower price, was admissible since the conversation was a part of the entire transaction and was connected with the crime of the sale of cocaine. *Bradley v. State*, 562 So. 2d 1276 (Miss. 1990).

In prosecution for sale of cocaine, undercover agent may testify that, in response to agent's question regarding availability of drugs, defendant responded that he had both cocaine and other drug. *Barnette v. State*, 481 So. 2d 788 (Miss. 1985).

20. —Entrapment.

Because defendant contended that the cocaine was not hers, her entrapment defense did not apply to her possession of cocaine conviction; an entrapment defense concedes the factual component of the underlying offense. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Court rejected defendant's claim that she established a standard entrapment claim; defendant knew where to find cocaine and had asked the confidential informant to set aside some cocaine for her after the sale, there was no evidence that she was fearful or reluctant to participate on the day of the sale, and defendant was not excused from buying or selling cocaine simply because the informant asked her to do so. The jury, after receiving the entrapment defense instruction, clearly believed

defendant was predisposed to commit both crimes of sale of cocaine and possession of cocaine. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Where defendant sold cocaine to an undercover agent after he was introduced to the agent by an informant, the facts supported an "asked and caught" determination. By asking defendant to sell, the informant merely created the opportunity for defendant to make the illegal sale and defendant was not repeatedly harassed or coerced to make said sale; thus, the circuit court correctly ruled against the jury instructions involving entrapment. *Gill v. State*, 924 So. 2d 554 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750 (Miss. 2006).

Evidence of defendant's prior drug transaction was properly admitted in prosecution of defendant for possession of cocaine with intent to deliver, in order to show predisposition, even though defense never introduced evidence of entrapment; defense raised issue of entrapment, issue was alive throughout trial, from being discussed on defense's opening argument to being submitted as jury instruction, and entrapment was still viable defense at time evidence was admitted. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996).

Where entrapment is pled as defense, evidence of predisposition is always relevant and, hence, always admissible, as very idea of entrapment suggests that person would never have committed crime had he not been persuaded or otherwise enticed. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996).

Whether defendant has committed other similar acts in past is relevant evidence where entrapment is pled as defense, as such evidence has tendency to show predisposition. *Sanders v. State*, 678 So. 2d 663 (Miss. 1996).

Fact that defendant raised entrapment defense rendered law enforcement agent's testimony that he had prior information that defendant sold drugs admissible to show predisposition, despite trial judge's ultimate refusal to give entrapment instruction, in prosecution for selling crack cocaine. *Walls v. State*, 672 So. 2d 1227 (Miss. 1996).

When an accused pleads entrapment, his predisposition to commit the crime

charged becomes a fact of consequence. Whether he has committed other similar acts in the past is relevant to show predisposition. *Sayre v. State*, 533 So. 2d 464 (Miss. 1988).

Trial judge abused his discretion in excluding evidence that state's witness had borne child by friend of defendant, where such evidence was not far removed from defense of entrapment, and defendant sought to establish that state's witness was trying to "get him" because he was friend of alleged father of her child. *Pulliam v. State*, 515 So. 2d 945 (Miss. 1987).

21. Identity of informant.

The State need not disclose an informant's identity unless the informant will be a witness at trial or was an eyewitness to the offense, or if failure to disclose would violate a constitutional right of the defendant; thus, a trial court did not err in overruling the defendant's motion to disclose the identity of a confidential informant where the informant did not witness the offense charged and did not serve as a witness in the proceeding, but merely provided data that established probable cause to support a search warrant. *Esparaza v. State*, 595 So. 2d 418 (Miss. 1992).

In a prosecution for delivery of a controlled substance and possession of a controlled substance with intent to distribute, the trial court did not abuse its discretion when it denied the defendants' motion for a continuance to afford them "an opportunity to locate the confidential informer" where the defendants had previously obtained a continuance because the informant was not available and spent six months "doing nothing," the defendants did not file the motion at issue until the day before trial, there was nothing in the record detailing the prosecution's efforts, or lack thereof, to produce the confidential informant, and there was nothing suggesting prosecutorial bad faith while the record reflected substantial defense dilatoriness. *Bosarge v. State*, 594 So. 2d 1143 (Miss. 1991).

The prosecution was not required to reveal the identity of a confidential informant in a prosecution for sale of cocaine where an undercover narcotics agent tes-

tified that she had prearranged with the informant that he would leave the room during the time when the offense was committed, that the informant had excused himself by going to the bathroom and was not present while the sale was being made and consummated, and that the informant did not return until the transaction was entirely over. *Bradley v. State*, 562 So. 2d 1276 (Miss. 1990).

Identity of confidential informant who has not become de facto law enforcement officer and who is not witness to any fact constituting offense of possession of cocaine with intent to transfer for which defendant has been indicted, tried and convicted is properly withheld from defendant. *Garvis v. State*, 483 So. 2d 312 (Miss. 1986).

Identity of informant who gives information upon which search warrant for drugs is based need not be disclosed to defendant in subsequent drug prosecution where confidential informant is not coconspirator intending to sell drugs, nor material witness to offense of intent to sell, and is not present when officers conduct search. *Breckenridge v. State*, 472 So. 2d 373 (Miss. 1985).

In a prosecution for unlawful sale of marijuana, refusal of the court to require disclosure of the identity of an informer who had apparently advised police officers that they could purchase marijuana from the defendant, but who was not an active participant or an eye witness to the offense, was not an abuse of discretion. *Young v. State*, 245 So. 2d 26 (Miss. 1971).

22. Sufficient evidence—possession.

Evidence was sufficient to convicted defendant of possession of less than 0.10 gram of cocaine in violation of Miss. Code Ann. § 41-29-139(c)(1)(A) because a forensic examiner testified that cocaine was found in defendant's shirt and pants pockets, the examiner testified that the cocaine was visible with the naked eye, and a jury could reasonably have concluded defendant was wearing his own clothes. *Hudson v. State*, — So. 2d —, 2009 Miss. App. LEXIS 58 (Miss. Ct. App. Feb. 10, 2009).

Where defendant tossed a pill bottle into the street containing crack cocaine when he saw an officer approaching, the

evidence was sufficient to support defendant's conviction for possession of cocaine pursuant to Miss. Code Ann. § 41-29-139. A search of defendant's person revealed \$1,280 dollars in one of his pants pockets. *Dampeer v. State*, 989 So. 2d 462 (Miss. Ct. App. 2008).

Defendant's conviction for possession of methamphetamine was appropriate because a passenger told the deputy that she and defendant had bought it from a black male and the deputy also testified that defendant told him that she and the passenger had gone to meet the male to purchase crystal methamphetamine. Accepting as true all the evidence supporting defendant's guilty verdict, the appellate court was unable to find that the circuit court erred in denying defendant's motion for a JNOV. *Barnett v. State*, 987 So. 2d 1070 (Miss. Ct. App. 2008).

To convict defendant of possession, the State had to prove that defendant knowingly or intentionally possessed a controlled substance under Miss. Code Ann. § 41-29-139; substances found in defendant's vehicle amounted to 134.7 grams of marijuana and 13.7 grams of cocaine, there was testimony that defendant was in possession of the drugs, the jury was free to judge the credibility of this testimony, and the evidence was sufficient to support defendant's guilty verdict, such that the trial court did not err in denying defendant's motion for a judgment notwithstanding the verdict. *Davis v. State*, 995 So. 2d 767 (Miss. Ct. App. 2008).

Because defendant never filed a motion for a new trial or a motion for judgment notwithstanding the verdict, defendant did not bring the issue that the verdict might have been against the overwhelming weight of the evidence to the attention of the trial court, and thus it could not be raised for the first time on appeal; however, procedural bar aside, the State showed that defendant possessed the drugs in question for purposes of Miss. Code Ann. § 41-29-139 and defendant did not bring forward any contradictory evidence and rested after the State's case, and thus the verdict was not so contrary to the overwhelming weight of the evidence. *Harris v. State*, 977 So. 2d 1248 (Miss. Ct. App. 2008).

Weight of the evidence supported the State's claim that defendant was in possession of the marijuana found in the vehicle driven by him, as well as in possession of the cocaine before the package was thrown from the vehicle, and the jury was free to evaluate the credibility of this evidence, such that a new trial was not warranted in this case. *Davis v. State*, 995 So. 2d 767 (Miss. Ct. App. 2008).

For purposes of defendant's conviction of possession of marijuana with intent to sell in violation of Miss. Code Ann. § 41-29-139, to establish defendant's constructive possession, given that no evidence showed that defendant owned the car he was driving, the State offered evidence that a police officer smelled marijuana on defendant, defendant confessed that it was his and that the cocaine was not, defendant confessed that he and his passenger were going to sell the marijuana, and the passenger had not seen a bag of drugs until defendant threw it at him during the stop; thus, the State put forth sufficient evidence that defendant possessed the marijuana found in the bag and there was sufficient evidence to support the trial court's denial of defendant's motion for a directed verdict. *Harris v. State*, 977 So. 2d 1248 (Miss. Ct. App. 2008).

Evidence supported defendant's conviction of possession of cocaine; defendant provided no evidence supporting her claim that the cocaine was planted in her car by police, amounting to official misconduct that allegedly constituted entrapment as a matter of law, and defendant was the only person in her car, the cocaine was found in a box in which defendant admitted that she kept drugs, and the jury was unpersuaded, as was the court, that defendant's allegations were sufficient to have required reversal. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Because defendant actively participated in an illegal drug transaction, the evidence was sufficient to support her sale of cocaine conviction without proof of benefit from the sale. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Where an officer testified that he found 288 pseudoephedrine pills in a car, defendant admitted that he was planning to cook methamphetamine, he instructed a

passenger in a car to go into a store and get "some," and he admitted that a trip was made to purchase pseudoephedrine, convictions under Miss. Code Ann. §§ 41-29-139, 41-29-313(2)(c) were adequately supported by the evidence. *Vardaman v. State*, 966 So. 2d 885 (Miss. Ct. App. 2007).

Because there was sufficient evidence to support a conviction on the conspiracy to possess marijuana with intent to sell more than five kilograms of marijuana, the necessary nexus existed to link defendant to the possession of the 25 pounds of marijuana bricks found in the co-conspirator's vehicle; thus, there was sufficient evidence to support her conviction for possession of more than five kilograms of marijuana. *Williams v. State*, 984 So. 2d 989 (Miss. Ct. App. 2007).

Where the evidence showed that defendant was chewing something when officers approached his car, he failed to rebut evidence showing that he was the owner of the car, and drugs were found on the driver's side of the car, there was sufficient evidence to support a conviction for cocaine possession under Miss. Code Ann. § 41-29-139(c)(1)(B). *Bates v. State*, 952 So. 2d 320 (Miss. Ct. App. 2007).

Evidence was sufficient to find defendant guilty of possession of cocaine in an amount less than one-tenth of one gram, Miss. Code Ann. § 41-29-139, because, *inter alia*: (1) defendant was in actual physical possession of the cocaine because it was found on his person during a routine booking at a jail house; (2) when defendant was questioned about the bag, he told the officer that the bag was a candy wrapper and asked the officer to dispose of the bag in the garbage; and (3) at no time did defendant disclaim the bag, as to suggest that it did not belong to him, and in fact he identified the bag falsely as a candy wrapper; therefore, the trial court did not err in denying defendant's motion for a directed verdict. *Nance v. State*, 948 So. 2d 459 (Miss. Ct. App. 2007).

Evidence was sufficient to support defendant's conviction for possession of marijuana where he possessed the package by taking delivery, thus exercising control and dominion over the package knowing it contained drugs. *Shanks v. State*, 951 So. 2d 575 (Miss. Ct. App. 2006).

Possession of cocaine conviction was affirmed because any rational juror could have concluded that defendant knowingly possessed cocaine at the time of his arrest, and that the verdict was not against the overwhelming weight of the evidence, when the jury heard the testimony from the officers that they observed defendant toss the cocaine onto the ground, and the jury had defendant's confession that he possessed cocaine at the time of his arrest. *Mayes v. State*, 925 So. 2d 130 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750 (Miss. 2006).

There was more than sufficient evidence from which jurors could reasonably conclude that defendant was in constructive possession of both the precursor chemicals and the methamphetamine at the lab; additional incriminating facts and circumstances supported defendant's awareness of the presence and character of the chemicals. *Kerns v. State*, 923 So. 2d 196 (Miss. 2005), cert. denied, — U.S. —, 126 S. Ct. 1797, 164 L. Ed. 2d 536 (2006).

As defendant testified he had cocaine in his possession the morning he was robbed by his crack cocaine dealer, and gave cocaine to the officer at the scene after reporting the robbery, the evidence was sufficient to convict him of possession under Miss. Code Ann. § 41-29-139. *Brown v. State*, 907 So. 2d 336 (Miss. 2005).

There was sufficient evidence for the jury to find defendant guilty of possession of cocaine because (1) an officer noticed that defendant threw something on the floor beside the left side of a chair; (2) the officer detained defendant, put him in handcuffs, and advised another officer of the presence of the substance that defendant threw on the floor; (3) the other officer retrieved the substance and placed it in a clear plastic evidence bag; and (4) the substance was later taken to the crime lab, where it was determined to contain cocaine. *Harris v. State*, 921 So. 2d 366 (Miss. Ct. App. 2005), cert. denied, 926 So. 2d 922 (Miss. 2006).

Where an informant purchased \$ 60 worth of cocaine from defendant at a motel room, there was enough evidence to support the jury's verdict that defendant was guilty of the sale and possession of

cocaine. *Williams v. State*, 903 So. 2d 752 (Miss. Ct. App. 2005).

Circuit court did not err in denying defendant's motion for a new trial where the police officers testified that they witnessed defendant throwing bags out of the window of a truck while attempting to elude them, and these bags were recovered and found to contain cocaine. *Sweet v. State*, 910 So. 2d 735 (Miss. Ct. App. 2005).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

Evidence was sufficient to support defendant's conviction for the crime of possession of a controlled substance, cocaine, where a security officer saw defendant drop something when defendant was running away from the officer and where the officer recovered in that exact location a matchbox with six pieces of crack cocaine inside. *Griffin v. State*, 859 So. 2d 1032 (Miss. Ct. App. 2003).

Sufficient evidence was presented to support a conviction for possession and sale of a controlled substance because the testimony of a confidential informant was not subject to corroboration; the informant was not an accomplice. *Hill v. State*, 865 So. 2d 371 (Miss. Ct. App. 2003).

Defendant's conviction for more than two grams but less than 10 grams of methamphetamine was proper where the court's constructive possession jury instruction was an adequate representation of the law and where the State put forward evidence from which a jury could have found defendant in constructive possession of the drugs. *Taylor v. State*, 841 So. 2d 1185 (Miss. Ct. App. 2003).

Where various witnesses testified to undercover operation, including testimony

that defendant directed assistant to deliver cocaine to informant, defendant's controlled substance convictions were not against the weight of the evidence. *Jones v. State*, 841 So. 2d 213 (Miss. Ct. App. 2003).

At trial, the trooper identified defendant as the individual who possessed the alleged cocaine, and an employee of the Mississippi Crime Lab also testified that the substance found in defendant's shoe during an inventory search did test positive for cocaine; more importantly, defendant confessed to possessing the cocaine, and therefore, the evidence was clearly sufficient to support defendant's conviction. *Jackson v. State*, 856 So. 2d 412 (Miss. Ct. App. 2003).

Defendant picked up drugs at a house, defendant was stopped by the trooper, the trooper discovered the cocaine under the seat, and the truck belonged to defendant; thus, the evidence showed that defendant constructively possessed the drugs, that defendant was guilty of conspiracy to possess cocaine and possession of cocaine with intent to sell, and that the trial court did not err in denying defendant's motion for JNOV or motion for new trial. *Smith v. State*, 839 So. 2d 489 (Miss. 2003).

Jury verdict was not against the overwhelming weight of the evidence as the accomplice's testimony, which was adopted by the jury as true, showed that defendant was not only aware of the presence of the cocaine in the vehicle, but that defendant was intentionally and consciously in possession of it, as defendant had helped to pack it in the car and was to be the experienced leader of the illegal excursion. *Maldonado v. State*, 796 So. 2d 247 (Miss. Ct. App. 2001).

Evidence was sufficient to support a conviction for possession of cocaine where (1) prior to arresting the defendant pursuant to a warrant, an officer checked the back seat of his vehicle for contraband and found none, (2) after arresting the defendant and transporting him to jail, the officer again checked the back seat of his vehicle and found a baggy containing cocaine in the seat, and (3) another officer, who had assisted by watching the defendant, testified that he did not see anyone place the cocaine in the vehicle. *Jones v. State*, 760 So. 2d 61 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for possession of cocaine where (1) a police officer attempted to stop the defendant's car when he noticed that the light over the rear license plate was stopped, (2) the defendant fled from the officer and tossed something out the window before stopping, and (3) upon searching the area, a chapstick vial with 13 rocks of crack cocaine was found. *Lee v. State*, 767 So. 2d 1025 (Miss. Ct. App. 2000).

Evidence was sufficient to show possession of marijuana where (1) the defendant admitted ownership of a shaving kit in which the marijuana was found and also admitted placing the kit in the back seat of a third person's car, (2) the pair then drove to the house trailer of one of the third person's friends, (3) they were there for an hour and then began a brief automobile ride that ended with a collision, and (4) immediately after the wreck, the defendant tried to get others to dispose of the shaving kit; although the defendant claimed that he did not know there was marijuana in the shaving kit and the shaving kit was not always in his possession. The jury properly rejected the contention that another person for reasons unknown secreted marijuana in the shaving kit during the defendant's stay at the trailer. *Meek v. State*, — So. 2d —, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000).

Evidence was sufficient to show constructive possession of marijuana by the defendant where the defendant was found with a pair of scissors in his hand while standing near containers with freshly cut marijuana in a house owned by his mother and with no one else in the house shown to have had a substantial connection to it or control of it. *Fox v. State*, 756 So. 2d 753 (Miss. 2000).

Evidence was sufficient to establish felony possession of marijuana. *Alexander v. State*, 736 So. 2d 1058 (Miss. Ct. App. 1999).

The evidence was sufficient to show possession by the defendant of more than one kilogram of marijuana found in his automobile where, although there was evidence that the defendant loaned the automobile to another person and that this

other person loaded the marijuana into the automobile while the defendant was not present, (1) the defendant thereafter drove the car approximately eight hours before permitting the other person to drive, (2) the defendant remained in the car as a passenger, and (3) the pungent smell of the marijuana permeated the inside of the vehicle and was readily detected by an officer when he entered the vehicle. *Fuente v. State*, 734 So. 2d 284 (Miss. Ct. App. 1999).

Defendants had constructive possession of cocaine carried by defendants' accomplice, who was employee at defendants' place of business and who followed defendants to location of drug delivery in automobile rented by one defendant. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Evidence in prosecution for possession of methamphetamine supported finding that such contraband was under defendant's knowing dominion and control; defendant was sole occupant in vehicle titled in his name, bag containing methamphetamine was on passenger side floor board, within defendant's immediate control, and defendant should have known that it was in his car. *Townsend v. State*, 681 So. 2d 497 (Miss. 1996).

In a prosecution for possession of cocaine with intent to deliver, the evidence was sufficient to establish that the defendant was in constructive possession of crack cocaine where a police officer felt what he described as a match box during a patdown search of the defendant, the defendant was the only passenger in the back seat of a police car that was searched immediately prior to his occupancy and again after he left the car, an officer saw him squirming in the back seat while he was being transported to the police station and noticed that he had worked his hands around to his left side as if he were reaching in his pocket, a search of the defendant at the police station failed to turn up a match box, and a match box containing crack cocaine was found in the back seat of the police car after the defendant had been escorted into the police station. *Miller v. State*, 634 So. 2d 127 (Miss. 1994).

In a prosecution for possession of cocaine with intent to distribute, the evidence was sufficient to support a guilty

verdict on the matter of possession where the defendant was observed by a police officer in a characteristic drug sale scenario, the defendant ran and attempted to barricade himself in a bedroom in his mother's home when the officer ordered him to stop, the officer saw him toss something near the bed, and 2 rocks of cocaine were found in the exact location where the officer had seen the defendant throw something. *Boyd v. State*, 634 So. 2d 113 (Miss. 1994).

The evidence was sufficient to support a conviction of possession of marijuana, even though the defendant testified that he had no marijuana on the day in question, where a narcotics officer stated that he saw the defendant with a plastic bag in his hand, the defendant threw that bag when the officer appeared, the officer watched the bag from the time it was in the defendant's hand until it was in custody, and the bag contained 6 smaller bags which were tested both in the field and the laboratory and determined to contain marijuana. *Jackson v. State*, 580 So. 2d 1217 (Miss. 1991).

Testimony of police officer, although contradicted, was sufficient to support a finding that defendant had constructive possession of marijuana, and to support a conviction for possession of more than one ounce but less than a kilogram of the substance. *Kinzev v. State*, 498 So. 2d 814 (Miss. 1986).

Admission of defendant that bedroom in trailer owned by defendant in which drugs were found was his, combined with testimony of others that drugs found were defendant's share of drugs previously obtained by defendant and other person, not only suffices to show defendant's constructive possession, but approaches showing of actual possession. *Pool v. State*, 483 So. 2d 331 (Miss. 1986), cert. denied, 476 U.S. 1160, 106 S. Ct. 2280, 90 L. Ed. 2d 722 (1986).

State may be allowed to proceed on indictment charging 5 counts of possession of controlled substances where crimes charged have same elements and proof, although carrying different maximum punishments, and arose from same transaction or occurrence; trial court properly recognizes different maximum

punishments by sentencing defendant separately on each charge for which convicted. *Dixon v. State*, 465 So. 2d 1092 (Miss. 1985).

Evidence that even though the defendant did not actually lease the apartment where drugs were found, he had been spending at least three evenings a week there and had moved his furniture into the residence was sufficient to support a finding that the defendant possessed the marijuana found in the apartment. *Holland v. State*, 263 So. 2d 566 (Miss. 1972).

23. —Sale or distribution, or intent as to same.

Verdict finding defendant guilty of selling cocaine in violation of Miss. Code Ann. § 41-29-139(a)(1) and conspiracy to sell cocaine in violation of Miss. Code Ann. § 97-1-1(a)(1) was not against the overwhelming weight of the evidence as there was testimony from several witnesses, including an accomplice, a narcotics agent, and a police officer, that defendant was involved in the drug sale. In addition, the jury was permitted to watch a video showing defendant's physical behavior during the drug sale negotiations in which defendant was shown talking to the accomplice with his hand over his mouth as the accomplice negotiated with an informant about the price of the cocaine. *Foriest v. State*, — So. 2d —, 4 So. 3d 385, 2009 Miss. App. LEXIS 36 (Miss. Ct. App. 2009).

Conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed because an informant's testimony was contradicted by one defense witness and an appellate court deferred to the jury's province to pass upon the credibility of witnesses. *Brown v. State*, 995 So. 2d 698 (Miss. 2008).

Although a videotape of a meeting between defendant and a confidential informant did not depict an actual exchange of money, it did show defendant placing something into the informant's hand. This evidence, coupled with a narcotics agent's testimony that he heard the informant ask defendant for \$60 worth of cocaine, and the fact that the informant returned with cocaine and without the state funds, was enough for a reasonable juror to infer

that a transfer for money took place. *Miller v. State*, 983 So. 2d 1051 (Miss. 2008).

Evidence was sufficient to support a conviction under Miss. Code Ann. § 41-29-139 because the State was not required to show that defendant personally placed crack cocaine in an informant's hands or personally profited from a sale; an aiding and abetting jury instruction was given, and the State showed substantial knowing participation in the consummation of a sale or in arranging a sale where defendant went with another man to buy the substance, but did not physically give it to the informant. *Spann v. State*, 970 So. 2d 135 (Miss. 2007).

Because the evidence clearly established that defendant sold and possessed cocaine, the court rejected defendant's claim that the convictions were against the overwhelming weight of the evidence. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Evidence was sufficient to support defendant's conviction of sale of cocaine; an entrapment defense conceded the factual component of the underlying offense and there was sufficient evidence that defendant sold cocaine, plus there was an audio recording of the transaction and defendant was caught with some of the buy money in her wallet. *Pittman v. State*, 987 So. 2d 1010 (Miss. Ct. App. 2007).

Evidence was more than adequate to support defendant's sale of a Scheduled II controlled substance conviction in weight and sufficiency because both an officer and a confidential informant identified defendant as the perpetrator on a audio/video recording of the drug sale transaction, and test results introduced at trial confirmed that the substance exchanged was rock cocaine; therefore, defendant's motion for JNOV/new trial was properly denied. *Williams v. State*, 963 So. 2d 1262 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of conspiracy to possess marijuana with intent to sell more than five kilograms of marijuana under Miss. Code Ann. § 97-1-1(a) because a co-conspirator's vehicle contained more than 25 pounds of marijuana, the mere amount of marijuana was sufficient to support a charge of possession with intent to trans-

fer, sell, or distribute more than five kilograms of marijuana, and defendant blocked a deputy's attempt to pull over a co-conspirator's vehicle. *Williams v. State*, 984 So. 2d 989 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of selling cocaine because: (1) while the videotape of the controlled drug buy was not perfect, the jury was entitled to give the footage whatever weight it believed was proper; (2) a confidential informant identified defendant in court and testified that defendant was the individual from whom he purchased cocaine; (3) although defendant claimed that the confidential informant's testimony was contradictory, conflicting, and lacked credibility, and was itself unsupported by the videotape, the confidential informant's testimony was largely consistent and was corroborated somewhat by an agent's testimony; (4) it was up to the jury to give whatever weight it deemed appropriate to the confidential informant's testimony; and (5) the confidential informant's narration of the videotape was proper as it was confined to matters he actually perceived first-hand. *McCoy v. State*, 954 So. 2d 479 (Miss. Ct. App. 2007).

Where the evidence consisted of an audio and video of defendant participating in a drug transaction, and a confidential informant testified regarding such, there was sufficient evidence to support a conviction under Miss. Code Ann. § 41-29-139(a)(1), despite defendant's assertion that he was out of state at the time and his argument that the informant was not credible due to a prior felony conviction; therefore, his motion for a directed verdict/judgment notwithstanding the verdict was properly denied and a new trial was not warranted since the verdict was not contrary to the overwhelming weight of the evidence. *Magee v. State*, 951 So. 2d 589 (Miss. Ct. App. 2007).

Directed verdict was properly denied in a case involving the sale of crack cocaine under Miss. Code Ann. § 41-29-139 because it was within the province of the jury to assess the credibility of a coded confidential informant and an undercover agent making the drug buy; both identified defendant from a photo lineup after the buy and testified as to their personal

knowledge. *Johnson v. State*, 950 So. 2d 178 (Miss. 2007).

Even though a confidential informant was biased due to the fact that he was working with police due to a pending shoplifting charge and the fact that he had been shot by defendant during an altercation, the jury was the proper judge of credibility; therefore, there was sufficient evidence to support a conviction under Miss. Code Ann. § 41-29-139 based on video and audio evidence of a drug buy. *Jones v. State*, 961 So. 2d 730 (Miss. Ct. App. 2007).

Evidence was sufficient to convict defendant of selling a schedule II controlled substance within 1,500 feet of a church and was not against the overwhelming weight of the evidence because, *inter alia*: (1) it was clear from the record that an informant did not have drugs on his person when he entered the home of defendant's mother; (2) it was clear that the informant did have drugs when he left her house; (3) a tape indicated that he purchased drugs from a male individual in the mother's home; and (4) the informant specifically identified defendant in court as the dealer; therefore, the trial court did not err in denying defendant's motions for a directed verdict, for a judgment notwithstanding the verdict, and for a new trial. *Singleton v. State*, 948 So. 2d 465 (Miss. Ct. App. 2007).

Defendant's conviction for the sale of dextropropoxyphene, a schedule IV controlled substance, in violation of Miss. Code Ann. § 41-29-139(a)(1), was proper because the jury heard evidence that defendant did not appear frightened at the moment of the sale, that she successfully asserted a claim for money otherwise going to the man she claimed placed her in imminent fear of physical harm, that she later left that man without incident and probably could have at any time, and that she voluntarily sold Darvocet because she hoped to profit from it; in all actuality, her defense was that she feared the potential of physical harm at some point in the future, rather than at the moment the sale occurred and, as such, it was within the province of the jury to resolve the issue with a conviction. *Smith v. State*, 948 So. 2d 474 (Miss. Ct. App. 2007).

At trial, the jury saw a videotape of defendant selling drugs to a confidential informant; defendant waived his rights and confessed to selling cocaine. There was sufficient evidence to support his conviction for the sale of cocaine in violation of Miss. Code Ann. § 41-29-139. *Williams v. State*, 936 So. 2d 387 (Miss. Ct. App. 2006).

Evidence was sufficient to support defendant's conviction for sale of cocaine where a witness testified that defendant took the cocaine from another person, placed it in a car, rode with it to the final destination, and gave it to the witness to deliver to the agent; involvement as a courier was sufficient to support a conviction for sale of cocaine. *Dear v. State*, 960 So. 2d 542 (Miss. Ct. App. 2006).

Evidence was sufficient to convict defendant where the evidence presented against defendant at trial included direct evidence by way of an audio-visual recording and testimony that defendant received money and handed the undercover officer cocaine in exchange for that money. *Hudderson v. State*, 941 So. 2d 221 (Miss. Ct. App. 2006).

When a confidential informant set up a drug buy with defendant, the transaction was recorded on a surveillance tape; although defendant argued that a reasonable jury would have believed his testimony over the testimony of the confidential informant, it was within the jury's province to deem the confidential informant's testimony more credible. *Walker v. State*, 956 So. 2d 292 (Miss. Ct. App. 2006).

Defendant's conviction for possession of 73.7 grams of marijuana with intent to distribute in violation of Miss. Code Ann. § 41-29-139(a)(1) was proper where there was a wealth of testimony indicating that the park in question was a city owned and maintained park. Thus, a reasonable juror would have been justified in concluding that a city park would have been available for public use. *Foster v. State*, 928 So. 2d 873 (Miss. Ct. App. 2005), cert. denied, 929 So. 2d 923 (Miss. 2006).

Evidence was sufficient to sustain a conviction for the sale of cocaine where a confidential informant testified that after receiving money from him, defendant

stated that he would be back in thirty minutes, and the informant testified that there were no drugs in the house before defendant arrived; that negated defendant's argument that the informant planted drugs in the house. *Bindon v. State*, 926 So. 2d 222 (Miss. Ct. App. 2005).

Defendant's accomplice cooperated with police and stated in a recorded conversation that defendant had come to Mississippi "to pick up drugs;" the police also found twenty-seven pounds of marijuana that had been transferred to defendant's vehicle. The evidence was sufficient to support defendant's conviction for unlawful possession of more than five kilograms of marijuana with intent to distribute and conspiracy to distribute marijuana. *Walker v. State*, 911 So. 2d 998 (Miss. Ct. App. 2005).

Sufficient evidence existed to support defendant's conviction for the sale of a controlled substance, alprazolam, in violation of Miss. Code Ann. § 41-29-139(a)(1), because an informant testified that defendant sold him the substance, the transaction was videotaped, the videotape was seen and heard by the jury, a crime lab technician testified that the evidence consisted of 12 whole tablets and .84 grams of crushed tablets, and a crime lab technician testified that an analysis using gas chromatography with mass spectrometry revealed that the substance was alprazolam. *Burgess v. State*, 911 So. 2d 982 (Miss. Ct. App. 2005).

Defendant's conviction for the sale of cocaine within 1,500 feet of a church in violation of Miss. Code Ann. §§ 41-29-139 and 41-29-142 was proper where the State offered sufficient testimony from two officers and an employee of the Mississippi Crime Lab to satisfy the requirement of Miss. R. Evid. 901(a) for establishing a proper chain of custody for admission of the cocaine at trial. *Johnson v. State*, 904 So. 2d 162 (Miss. 2005).

Weight of the evidence against defendant demonstrated that sufficient proof was offered for the jury to find defendant guilty; the jury properly chose to believe the State's witnesses, and their testimony over that of defendants, and the confidential informant's testimony was properly

admitted by the trial court where there was never an issue presented as to the veracity of the informant's statements or the information acquired from his participation. *Hodges v. State*, 906 So. 2d 23 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184 (Miss. 2005).

Defendant's involvement as a courier was sufficient conduct to support his conviction for the sale of cocaine. *Edwards v. State*, 878 So. 2d 1106 (Miss. Ct. App. 2004).

In defendant's trial for sale of cocaine, the fact that portions of a videotape that purportedly recorded the drug transaction were missing did not diminish the effect of the testimony of the confidential informant who made the drug buy. *Steen v. State*, 873 So. 2d 155 (Miss. Ct. App. 2004).

Prosecution did not need to prove that defendant handed the cocaine directly to the undercover agent or that he personally profited from the sale in order to be found guilty as a principal. The evidence the prosecution did present was sufficient to convict defendant of sale of a schedule II controlled substance because (1) it showed that defendant was present and intimately involved with the sale of cocaine to the undercover agent through his contact and (2) defendant's witnesses, who testified that defendant was not at the scene of the sale, were impeached at trial. *Jackson v. State*, 885 So. 2d 723 (Miss. Ct. App. 2004), cert. denied, 887 So. 2d 183 (Miss. 2004).

Evidence was sufficient to convict defendant of sale of cocaine where the jury resolved any conflicts in favor of the verdict and there was no reason to disturb the jury's verdict; the verdict was not so contrary to the overwhelming weight of the evidence that allowing it to stand would have sanctioned an unconscionable injustice. *Carter v. State*, 869 So. 2d 1083 (Miss. Ct. App. 2004).

Defendant questioned the discrepancies between the officer's testimony that two rocks of cocaine were purchased, and the crime laboratory report which indicated only one rock of crack cocaine was received; however, the appellate court held the undercover officer's eyewitness account, the videotape recording the trans-

action, and the testimony of witnesses showing the chain of custody of the substance, were sufficient to support defendant's conviction. *Bullins v. State*, 868 So. 2d 1045 (Miss. Ct. App. 2004).

Where a confidential informant testified to buying drugs from defendant, an officer heard the transaction occurring over the informant's body transmitter, the officer was familiar with defendant's voice, and the money used to buy the drugs was found inside the residence during a subsequent search, there was sufficient evidence to support a conviction for the sale of cocaine, despite the fact that the money was located on defendant's girlfriend, and the recorder on the confidential informant was accidentally turned off. *Stubbs v. State*, 878 So. 2d 130 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

Trial court properly denied defendant's motion for judgment notwithstanding the verdict following a jury conviction of the sale of cocaine, Miss. Code Ann. § 41-29-139; the verdict was supported by sufficient evidence and was not against the manifest weight of the evidence, as defendant failed to show that the fact that an undercover officer had paid defendant five dollars to purchase crack cocaine had made defendant an employee of a narcotics task force when he purchased cocaine. *Minor v. State*, 861 So. 2d 356 (Miss. Ct. App. 2003).

Evidence was legally sufficient to support every element of the crime for which defendant was charged where the officer testified on the scenario and the use of a confidential informant; as a result, the trial court was correct in denying defendant's motion for a directed verdict, and, when viewing all the evidence in a light consistent with the verdict and giving the State all favorable inferences that may be drawn from the evidence, the verdict was not against the overwhelming weight of evidence. *Wolverton v. State*, 859 So. 2d 1073 (Miss. Ct. App. 2003).

Defendant's conviction and sentence for possession of more than one kilogram of marijuana with intent to distribute were both proper where the evidence of at least the first parcel should not have been suppressed because the evidence presented to

the magistrate in the affidavit along with proof of the drug dog's "alerting" to the package was sufficient probable cause to meet the totality of the circumstances test; although the detention of the second package for eight days without a search warrant might have violated the reasonableness test, it was not sufficient grounds for reversal because it was not objected to at the trial level and if defendant was convicted for possession only of the marijuana found in the first package and not convicted of the cumulative weight of both packages, she would have been required to serve a sentence of 4 to 16 years and the sentence of 6 years that she did receive was within the statutory limit. *Arguelles v. State*, 867 So. 2d 1036 (Miss. Ct. App. 2003).

Evidence was sufficient to convict defendant for the sale of cocaine where the State presented substantial evidence, including an audio tape of a transaction between defendant and a civilian informant that corroborated much of the civilian's testimony concerning the transaction and was properly admitted as evidence. *Denson v. State*, 858 So. 2d 209 (Miss. Ct. App. 2003).

Evidence was sufficient to support defendant's conviction for possession with intent to distribute marijuana as it showed that defendant had mailed a package weighing in excess of 36 pounds to an individual, defendant drove the individual to the post office to pick up the package, agreed to pay the individual \$ 500 to pick up the package, after having picked up the package, defendant fled when law enforcement officers attempted to stop him, and the package contained drugs in an amount that far exceeded personal use amounts. *Clarke v. State*, 859 So. 2d 1021 (Miss. Ct. App. 2003).

Trial court properly denied defendant's motion for directed verdict and/or judgment notwithstanding the verdict where all the evidence pointed to the fact that defendant had committed the crime of selling cocaine. *Berry v. State*, 859 So. 2d 399 (Miss. Ct. App. 2003).

Evidence was sufficient to convict defendant where the jury could have reasonably found defendant to be in constructive possession of cocaine because there were

sufficient facts to warrant a finding that defendant was aware of the presence of cocaine and was intentionally and consciously in possession of it. *Lenoir v. State*, 853 So. 2d 845 (Miss. Ct. App. 2003).

Sufficient evidence existed to deny defendant's motion for a directed verdict and convict defendant, where the jury was allowed to hear an audiotape of defendant selling crack cocaine to a confidential informant, a police officer testified that he had prepared the informants for the buy, searched both informants and their car, placed the body wire on the informants, listened to the transaction as it occurred, and received the crack cocaine directly after the buy. *Mims v. State*, 856 So. 2d 518 (Miss. Ct. App. 2003), cert. denied, 859 So. 2d 1017 (Miss. 2003).

Reviewing the evidence in a light favorable to the verdict, the appellate court found that the officers involved in the drug sale testified as to the transaction, the substance sold tested positive for the presence of cocaine, and defendant admitted that defendant sold the substance to an undercover officer; thus, the facts supported the jury's verdict finding defendant guilty of selling cocaine and the trial court did not abuse its discretion in denying defendant's motion for new trial. *Green v. State*, 856 So. 2d 396 (Miss. Ct. App. 2003).

Where various witnesses testified to undercover operation, including testimony that defendant directed assistant to deliver cocaine to informant, defendant's controlled substance convictions were not against the weight of the evidence. *Jones v. State*, 841 So. 2d 213 (Miss. Ct. App. 2003).

Concerning the sufficiency of the evidence, the jurors had sufficient evidence to find defendant guilty of selling cocaine, including the officers' testimony regarding the sale, the videotape of the transaction, and the confirmation that the item sold did contain cocaine; thus, the trial court properly denied defendant's request for a directed verdict and defendant's motion for a judgment notwithstanding the verdict. *Green v. State*, 856 So. 2d 396 (Miss. Ct. App. 2003).

Evidence was sufficient to convict defendant of selling cocaine within 1500 feet of

a church; defendant sold crack cocaine to a narcotics agent, who testified that defendant was the seller, and a criminal investigator testified that a videotape of the transaction showed that defendant was the seller. *McDonald v. State*, 807 So. 2d 447 (Miss. Ct. App. 2001).

No entrapment of the defendant occurred and, therefore, he was properly convicted of transferring cocaine where (1) narcotics agents simply contracted with a confidential informant to call the defendant and ask for drugs, (2) there was no evidence that the informant was ordered to take any extreme measures to induce the defendant into accepting his offer to buy crack cocaine, and (3) the informant paid standard street value for the cocaine purchased from the defendant. *Tran v. State*, 785 So. 2d 1112 (Miss. Ct. App. 2001).

Evidence was sufficient to establish five separate sales of crack cocaine by the defendant based on his substantial knowing participation in the consummation of the sales or in arranging for the sales of cocaine. *Lewis v. State*, 765 So. 2d 493 (Miss. 2000).

The judge correctly found that the defendant failed to give sufficient information and assistance to the Bureau, regardless of the indefiniteness of the type and degree of information required, that objectively should or would have aided in an arrest or prosecution of other violators of subsection (f) of this section. *Lewis v. State*, 765 So. 2d 493 (Miss. 2000).

Evidence was sufficient to establish the defendant's intent to distribute marijuana where he was found in possession of more than eight ounces of marijuana, some of which was contained in 10 small bags, and a witness testified that he bought two bags of marijuana in the house in which the defendant was found. *Fox v. State*, 756 So. 2d 753 (Miss. 2000).

Evidence was sufficient to establish a transfer of cocaine by the defendant to a confidential informant, notwithstanding the defendant's assertion that they were engaged in a joint venture to use cocaine and that, therefore, there was no transfer, where the defendant knowingly transferred cocaine to the confidential informant and there was no evidence that they

combined their money or property to purchase the cocaine. *Hamilton v. State*, 756 So. 2d 844 (Miss. Ct. App. 2000).

Evidence was sufficient to show a transfer of marijuana where (1) the defendant admitted ownership of a shaving kit in which the marijuana was found and also admitted placing the kit in the back seat of a third person's car, (2) the pair then drove to the house trailer of one of the third person's friends, (3) they were there for an hour and then began a brief automobile ride that ended with a collision, (4) immediately after the wreck, the defendant gave the shaving to a good samaritan and tried to get him to dispose of it, and (5) the suspicions of the good samaritan led him to give it right back. *Meek v. State*, — So. 2d —, 2000 Miss. App. LEXIS 64 (Miss. Ct. App. Feb. 8, 2000).

Evidence was sufficient to establish a sale by the defendant to an undercover police officer where a confidential informant transferred the drugs at the behest of the defendant, the drugs were under the defendant's direct control, and he was cognizant of the existence of the undercover officer. *York v. State*, 751 So. 2d 1194 (Miss. Ct. App. 1999).

Evidence was sufficient to support a conviction for the sale of amphetamines. *Sullivan v. State*, 749 So. 2d 983 (Miss. 1999).

Evidence was sufficient to show that the defendant sold cocaine where (1) an officer testified that he bought crack cocaine from a man during a sting operation on the day in question, and identified that man as the defendant, (2) a detective testified that he had known the defendant and his brother for 12 years and that the defendant was the man depicted on the videotape of the drug sale and the still photograph taken from that same videotape, and (3) the jury was able to view the videotape of the transaction and the defendant in the courtroom. *Galloway v. State*, 735 So. 2d 1117 (Miss. Ct. App. 1999).

The evidence was sufficient to support a conviction for sale or transfer of a controlled substance where it appeared that the defendant was "minding the store" for her husband but actually involved herself with the sale at issue. *Bingham v. State*, 723 So. 2d 1193 (Ct. App. 1998).

Evidence was sufficient to support a conviction for the sale of cocaine where (1) there was positive in-court identification of the defendant as the seller of cocaine on two separate occasions on a certain date, (2) a videotape of the transactions was introduced, and three persons identified the individual in the videotape as the defendant, and (3) an agent testified that he monitored the transactions by way of listening devices. *White v. State*, 722 So. 2d 1242 (Miss. 1998).

Evidence was sufficient to support the defendant's conviction for sale of cocaine, enhanced as a second offender where he sold three rocks of cocaine to an informant and the transaction was captured on audiotape which was presented at his trial. *Bridges v. State*, 716 So. 2d 614 (Miss. 1998).

Defendant's convictions for sale of controlled substance and conspiracy to sell controlled substance were supported by evidence that defendant sold two rocks of crack cocaine to undercover informant and that defendant conspired with relative to sell, and did sell, two rocks of crack cocaine to undercover officer next day. *Herring v. State*, 691 So. 2d 948 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Where controlled substance is present in amount which person could reasonably hold for personal use, other evidence of possible involvement in drug trade may be sufficient to establish intent to deliver. *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

Defendants' intent to deliver cocaine which they possessed was established by evidence that quantity of cocaine was beyond amount which average user could consume and by testimony of accomplice and police officer regarding arrangements of controlled "buy." *Jackson v. State*, 689 So. 2d 760 (Miss. 1997).

The evidence was sufficient to support a conviction of accessory before the fact of sale of cocaine where the defendant approached a vehicle that an undercover agent and an informant were driving, and told them that they were late and the cocaine had been "sent back," but to wait and someone would "take care" of them. *Turner v. State*, 573 So. 2d 1340 (Miss.

1990), post-conviction relief denied, 673 So. 2d 382 (Miss. 1996).

The evidence was sufficient to support a conviction of sale of cocaine, in spite of the defendant's argument that the evidence was insufficient because none of the State's witnesses personally observed cocaine and money changing hands, where the witnesses testified that the defendant entered a vehicle with another person who was holding \$100 in cash, and that person exited the vehicle several minutes later with the cocaine and without the cash. *Walton v. State*, 642 So. 2d 930 (Miss. 1994).

The evidence was sufficient to establish the defendant's "substantial knowing participation in the consummation of a sale or in arranging for the sale" of cocaine where the defendant told the buyer that he knew where he could get some crack cocaine, he got into the buyer's car, he told the seller that the buyer wanted to purchase some cocaine, and he remained with the buyer and seller while the sale was consummated. *Johnson v. State*, 642 So. 2d 924 (Miss. 1994).

In a prosecution for possession of cocaine with intent to distribute, the evidence was sufficient to support a guilty verdict on the matter of intent, even though the defendant had only 2 rocks of cocaine in his possession, where he was seen by a police officer engaged in conduct which was characteristic of selling drugs in a locale known for that activity, possession of a small quantity of contraband was characteristic of the street sale of drugs in that location, and the defendant ran and attempted to barricade himself in a room in his mother's home when he was ordered to stop by a police officer. *Boyd v. State*, 634 So. 2d 113 (Miss. 1994).

The evidence was sufficient to prove a defendant's intent to distribute cocaine where the defendant had possession of 47 individual pieces of crack cocaine and made an admission at the time of his arrest concerning his involvement in trafficking drugs. *Edwards v. State*, 615 So. 2d 590 (Miss. 1993).

The evidence was sufficient to establish that the defendant had the intent to sell cocaine where the defendant was in constructive possession of approximately

1200 rocks of cocaine, the cocaine was packaged on 46 separate bricks, police officers found approximately \$5,000 and a firearm hidden underneath a dishwasher, a police officer testified that he saw people coming and going from the apartment where the cocaine was found, and 5 rocks of cocaine were seized from a person leaving the apartment. *Roberson v. State*, 595 So. 2d 1310 (Miss. 1992).

The evidence was insufficient to prove intent to distribute marijuana where the defendant possessed 323.4 grams of marijuana, two sets of portable scales, a surgical tool, rolling papers, and \$356.00 in currency, since this evidence could just as easily imply possession for personal use as intent to deliver; the possession of these items together created a suspicion of intent but not an intent to deliver marijuana, and § 41-29-139 requires more than mere suspicion. *Jowers v. State*, 593 So. 2d 46 (Miss. 1992).

The evidence was sufficient to support a conviction of the defendant for aiding and abetting his brother in the sale of cocaine, despite the defendant's defense that he had no idea what was happening though he was present during the sale, where the defendant drove his brother to meet a confidential informant and 2 undercover narcotics agents for the purpose of making the sale of cocaine, the defendant then drove his brother to another location where he remained with the informant and the two agents while his brother went to get the cocaine, and the defendant was present when his brother returned and completed the sale. *Gowdy v. State*, 592 So. 2d 29 (Miss. 1991).

The evidence was sufficient to support a conviction for sale of cocaine where the case for the prosecution consisted of the testimony of an undercover agent who purchased cocaine from the defendant, a surveillance sergeant and a forensic chemist. *Doby v. State*, 557 So. 2d 533 (Miss. 1990).

Testimony of state witnesses, undisputed experts, who are positive from tests made by them that substance sold by defendant to undercover agent was cocaine is sufficient to support conviction for sale of cocaine notwithstanding that one expert testifies he never used 2 of tests

used by other expert in determining whether or not substance is cocaine, and notwithstanding testimony of defense expert, who never examined substance at issue, that tests of state experts were inconclusive. *Sanders v. State*, 479 So. 2d 1097 (Miss. 1985).

Evidence of possession of small quantities of prazepam, hash and hash oil is sufficient to support conviction for possession with intent to sell substances in light of numerous other drugs seized along with address book, cash receipt book (with reference to large money transaction), and large quantities of money. *Breckenridge v. State*, 472 So. 2d 373 (Miss. 1985).

24. Insufficient evidence—possession.

As to defendant's alleged possession of a controlled substance, several students either testified or submitted written statements implicating defendant in drug activity at the subject school, but none of those students could testify to dates, and no tangible evidence of a chemically analyzed controlled substance was offered by the State at any time during the hearing. An agent for the State simply testified that the youth's descriptions of the various pills corresponded with the descriptions of several Schedule II drugs; secondly, although a number of the youths stated that defendant told them he was stealing pills and selling them, standing alone, those statements (out-of-court admissions by a child defendant), were insufficient to support an adjudication of delinquency, and the evidence failed to meet the required proof beyond a reasonable doubt standard, which was applicable to adult proceedings as well as juvenile proceedings. In the Interest of T.B., 909 So. 2d 131 (Miss. Ct. App. 2005).

Evidence was insufficient to support a conviction for possession of methamphetamine where: (1) while on break from his employment as a black jack dealer at a casino, the defendant encountered a woman and had a conversation with her, (2) during the conversation, the defendant picked up the woman's cigarette case, reached into it, pulled out some lip balm, used it, and put it back in the case, and (3) after he returned the cigarette case to her, several security officers detained the defendant and the woman and confiscated

the cigarette case, in which methamphetamine was found; the evidence was insufficient to establish either actual or constructive possession of methamphetamine. *Mauldin v. State*, 750 So. 2d 564 (Miss. Ct. App. 1999).

Evidence was insufficient to support a conviction for possession of methamphetamine and cocaine where the only evidence which implicated the defendant was a film canister contained in a flannel shirt which was recovered from the truck that the defendant was driving at the time of an accident five hours after the accident; the physical presence of the drugs in the film canister was rendered highly suspect by the fact that five hours elapsed from the time of the accident until the discovery of the evidence and, moreover, there was no evidence in the record that linked the drugs to the defendant. *Alexander v. State*, 749 So. 2d 1031 (Miss. 1999).

A defendant's momentary handling of cocaine was insufficient to support a conviction for possession of cocaine where he was handed the cocaine by a friend while in the friend's car and placed it in the glove compartment at the friend's direction; the defendant's momentary handling of the cocaine under these circumstances was insufficient to support an inference of dominion and control, since he briefly handled the cocaine with explicit direction as to immediate disposition. *Berry v. State*, 652 So. 2d 745 (Miss. 1995).

The evidence was insufficient to establish the defendant's constructive possession of cocaine where the defendant rode in a car with a friend to the location of a drug sale, he and the friend got out of the car and into another car where the drugs were purchased, they returned to the friend's car and the friend handed him the cocaine wrapped in tissue to place in the glove compartment, and he placed the cocaine in the glove compartment at the friend's request; the evidence was not sufficient to evince that the defendant had any control over the cocaine, since there was no evidence that he owned the drugs, paid for them, or controlled them in any manner. *Berry v. State*, 652 So. 2d 745 (Miss. 1995).

The evidence was insufficient to support a finding that the defendant had constructive possession of crack cocaine found in a

matchbox between the 2 front seats of an automobile, even though the defendant was the operator of the automobile and had had possession of the car for 15 hours, where the defendant was not the owner of the car and there were no additional incriminating circumstances. *Ferrell v. State*, 649 So. 2d 831 (Miss. 1995).

There was insufficient evidence to establish that a defendant possessed 31 pounds of marijuana found in a barrel, and therefore his conviction for possession of more than one kilogram of marijuana would be reversed, even though the defendant returned from an unknown location with a one-pound bag of marijuana which was packaged similarly to the bags found in the barrel and the defendant stated that he had 100 pounds of marijuana, where the defendant did not own the land on which the barrel was found and there was no evidence that the defendant exercised dominion or control over the shed which contained the barrel. *Newell v. State*, 590 So. 2d 1386 (Miss. 1991).

The evidence was insufficient to support a finding that the defendant had constructive possession of cocaine which was found in a truck in which the defendant was a passenger, where the State merely asserted that the defendant repeatedly looked through the truck's rear window at sheriff's officers after they turned on their blue lights, the defendant and the driver of the truck were good friends so that any contraband owned by one was more likely than not owned by both, and the truck driver's testimony that he loaned the vehicle to a friend was not given to the arresting officers and was not believable. *Cunningham v. State*, 583 So. 2d 960 (Miss. 1991).

The evidence was insufficient to support a finding that the defendant had actual or constructive possession of cocaine residues that were found in a trailer owned by the defendant's sister, even if the defendant was a joint occupant of the trailer. *Clayton v. State*, 582 So. 2d 1019 (Miss. 1991).

The evidence was insufficient to establish that the defendant knowingly and intentionally possessed marijuana found in the trunk of a car the defendant had been driving where the car belonged to the defendant's sister and the defendant denied

having any knowledge of the marijuana in the trunk, and the only additional incriminating circumstance was that the defendant had a small amount of marijuana on his person at the time of the arrest. *Fultz v. State*, 573 So. 2d 689 (Miss. 1990).

State failed to prove possession of cocaine where the contraband was not found on the defendant's person but was found in the patrol car which was used to take the defendant and another person to the police station, the defendant testified that she had never seen the package of cocaine and that she had no idea what it was, the arresting officers admitted that neither one had seen the defendant with cocaine in her possession, and the officer who drove the patrol car admitted that he did not know where the contraband came from, how it got into his car. *Campbell v. State*, 566 So. 2d 475 (Miss. 1990).

Evidence of presence of defendant in former wife's house in which marijuana was found hidden at various locations, and of presence of both male and female clothes in bedroom closet and mail addressed to defendant is insufficient to establish defendant's constructive possession of marijuana where defendant and former wife had been divorced for one year and wife had been granted exclusive use and occupancy of home. *Burnham v. State*, 467 So. 2d 946 (Miss. 1985).

25. —Sale or distribution or intent as to same.

Jury's verdict convicting defendant for sale of a controlled substance was not against the overwhelming weight of the evidence, where two police officers positively identified defendant as the man who sold crack cocaine to one of the officers. *Smith v. State*, 936 So. 2d 1000 (Miss. Ct. App. 2006).

Conviction reversed where evidence was insufficient to show a recognition on the part of the two sets of conspirators that they were entering into a common plan, knowingly intending to further its common purpose to sell LSD to another person. *Lee v. State*, 756 So. 2d 744 (Miss. 1999).

The evidence was insufficient to support a conviction for possession of cocaine with intent to distribute where the defendant possessed one rock of crack cocaine with a street value of approximately \$20, a dep-

uty sheriff observed some type of exchange between the defendant and another individual, the defendant was in an area associated with drug usage and sales, he was carrying \$223.75 and an electronic pager, and he admitted in a written statement that he had been selling drugs in the past 3 weeks. *Holland v. State*, 656 So. 2d 1192 (Miss. 1995).

The evidence was insufficient to allow the jury to conclude that the defendant intended to distribute crack cocaine, rather than purchase the drug, even though he was in an area known for the sale of crack cocaine and was in the presence of a drug dealer with one hand extended into a car and money in the other hand, since the circumstances gave no clue as to the identity of the "seller." *Hartfield v. Hartford Life & Accident Ins. Co.*, 656 So. 2d 104 (Miss. 1995).

The evidence was insufficient to establish that the defendant intended to distribute cocaine where, at the time of his arrest, he possessed 15 rocks of cocaine and \$515 in currency, which consisted of 14 20-dollar bills, 11 10-dollar bills, 23 5-dollar bills, and 10 one-dollar bills, but there was no evidence connecting the defendant with any activity indicating a drug sale. *Murray v. State*, 642 So. 2d 921 (Miss. 1994).

In a prosecution for possession of marijuana with intent to sell, the evidence was insufficient for a reasonable jury to conclude beyond a reasonable doubt that the defendant had the necessary intent to sell marijuana where the marijuana confiscated weighed approximately 4 ½ ounces, \$800 in cash was found with the marijuana between the mattresses in the defendant's bedroom, and there was conflicting testimony with respect to the meaning of names and numbers written on a shoe box containing drug paraphernalia and residue found in the defendant's home. *Jones v. State*, 635 So. 2d 884 (Miss. 1994).

In a prosecution for possession of cocaine with intent to deliver, the evidence was insufficient to establish intent to deliver where the defendant was in possession of 12 rocks of crack cocaine, and a police officer testified that a user normally did not have more than 1 or 2 rocks in his possession and that 12 rocks would yield a

"4-hour high if smoked continuously," but there was nothing else connecting the defendant with the possibility that the drugs were intended for sale. *Miller v. State*, 634 So. 2d 127 (Miss. 1994).

Evidence that a police officer, while standing outside an apartment door, overheard a conversation between 3 people inside the apartment concerning a sale of cocaine, was insufficient to support a conviction for conspiracy to distribute the cocaine where the statements overheard by the officer were not identified as coming from any particular person. *Mickel v. State*, 602 So. 2d 1160 (Miss. 1992).

A defendant's possession of 11 ½ ounces of marijuana contained in 4 sandwich bags along with \$861.69 in assorted denominations, without more, was insufficient evidence to sustain the defendant's conviction for possession of marijuana with intent to sell. *Girley v. State*, 602 So. 2d 844 (Miss. 1992).

The evidence was insufficient to support a conviction of intent to distribute cocaine where the defendant possessed a small quantity of cocaine in another's apartment from which additional cocaine was seized along with contraband identified with distribution of cocaine and crack, since the evidence only pointed to a mere suspicion of intent to distribute. *Thomas v. State*, 591 So. 2d 837 (Miss. 1991).

A conviction for possession of cocaine with intent to distribute would be reversed where the defendant possessed enough cocaine for 4 days' personal consumption but there were no surrounding circumstances from which an intent to distribute could be inferred. *Stringfield v. State*, 588 So. 2d 438 (Miss. 1991).

The evidence was insufficient to support a finding of guilty of sale of cocaine beyond a reasonable doubt, where the only witness who identified the defendant was a paid confidential informant who described the man who sold to him as being 5 feet 6 inches tall and weighing 130 pounds, though the defendant was 6 feet tall and weighed 184 pounds; the discrepancy in the informant's description generated considerable doubt, particularly since the informant described the seller as being smaller than himself, while in fact the defendant was a much larger person in

terms of both height and weight. *Ashford v. State*, 583 So. 2d 1279 (Miss. 1991).

The evidence was insufficient to establish that the defendant intended to distribute cocaine, even though his conduct was similar to that of others who traffic in drugs and the cocaine was packaged in individual packets, since this evidence was insufficient to allow a reasonable factfinder to conclude beyond a reasonable doubt that the defendant intended to distribute the cocaine rather than keep it for his personal use. *Hicks v. State*, 580 So. 2d 1302 (Miss. 1991).

The evidence was insufficient for the jury to conclude beyond a reasonable doubt that the defendant intended to distribute marijuana rather than retain or purchase it for his personal use where the defendant had in his possession 4.1 grams of marijuana divided in 6 nickel bags, a narcotics officer testified that a user normally purchased only one or 2 nickel bags, the drugs possessed by the defendant were packaged in the manner normally used for sale, the defendant had \$103 in cash on his person, and the defendant held the drugs in one hand and the money in the other, since this evidence gives rise to 2 reasonable but completely opposite inferences—that the defendant was either completing a purchase or attempting to make a sale. *Jackson v. State*, 580 So. 2d 1217 (Miss. 1991).

The evidence was insufficient to support a conviction for constructive possession of marijuana or for possession of marijuana with intent to distribute where the only proof of the defendant's guilt was that he rented a motel room and that the contraband was found in the room the day after the defendant had checked out, even though the maid who cleaned the room the day after the defendant checked out testified that a man entered the room while she was cleaning it and said he had returned to "get his stuff." *Pate v. State*, 557 So. 2d 1183 (Miss. 1990).

The evidence was insufficient to support a conviction for possession of a controlled substance with intent to distribute where the evidence showed that the defendant had in his possession 21 sets of what are commonly known as T's and Blues, the amount in the defendant's possession would be a week's supply for the average user but

only a few days' supply for an addict, the sets were packaged individually which is the way in which they are normally packaged for sale but is also the way they are purchased for personal consumption, and no sale was proved on the date in question by the undercover agents, even though the drugs are taken intravenously but the defendant had no syringes on his person with which to take these drugs, the area in which the defendant was found was a known drug trafficking area in which the defendant had been seen many times before, and one of the arresting officers, who was experienced in the area of narcotics enforcement, testified that of the many T's and Blues related arrests he had made in the past, more suspects than not carried fewer than 20 sets. *Stringer v. State*, 557 So. 2d 796 (Miss. 1990).

Evidence that defendant was aware of possibility that future sale of narcotics would be made is insufficient to render defendant criminally accountable as principal in sale of substance. *Clemons v. State*, 482 So. 2d 1102 (Miss. 1985).

Evidence of defendant's possession of valium in bottle containing 17 other pills and capsules is insufficient to support conviction for possession of valium with intent to distribute where defendant's physician testifies that defendant has been given prescription for valium and where other pills and capsules are antibiotics, defendant has spinal degenerative arthritis, is diabetic, has chronic bronchitis and has back problems; defendant does not need to prove that valium seized is valium prescribed by doctor. *Breckenridge v. State*, 472 So. 2d 373 (Miss. 1985).

Evidence that defendant possessed 55 $\frac{3}{4}$ methaqualone tablets and 85 $\frac{1}{2}$ diazepam tablets was insufficient to sustain a conviction of possession with intent to deliver the controlled substances, where there was no proof of any sale, attempted sale, or anything suggestive of any intent to deliver. *Bryant v. State*, 427 So. 2d 131 (Miss. 1983).

In a prosecution for delivery of a controlled substance in violation of this section [Code 1972, § 41-29-139], it was an essential element of the offense that defendant have knowledge that he was delivering a controlled substance and that

he intended to deliver a controlled substance, and the judgment was reversed and the cause remanded where the record showed that such knowledge was not proved. *Applegate v. State*, 301 So. 2d 853 (Miss. 1974).

26. —Manufacture.

The uncorroborated testimony of an alleged accomplice was insufficient to support a conviction for conspiracy to manufacture marijuana where the accomplice contradicted himself concerning payments allegedly made to him by the defendant, and another witness' testimony substantially impeached that of the accomplice; although the other witness had reasons for bias and a fair-minded juror could reject his testimony as unconvincing, it could not be discarded so completely as to eliminate reasonable doubt, particularly when combined with the accomplice's self-contradictory statements. *Flanagan v. State*, 605 So. 2d 753 (Miss. 1992).

Evidence that the defendant owned property where marijuana plants were found growing in pots was not sufficient to

support a conviction for manufacturing marijuana where there was evidence that the defendant's son had exercised domination and control over the plants. *Flurry v. State*, 536 So. 2d 1340 (Miss. 1988).

In a prosecution for possession of marijuana with intent to deliver arising out of the discovery in the defendant's car of marijuana and drug paraphernalia, including a leather bag, scales and a box of plastic bags, the case would be remanded for the sentencing of defendant for possession of more than one ounce of marijuana where the evidence, both direct and circumstantial, failed to show intent, or attempt, to deliver the marijuana. *Hollingsworth v. State*, 392 So. 2d 515 (Miss. 1981).

27. Best evidence.

Best evidence rule does not require that tape recording of conversation relating to marijuana sale be used to exclusion of direct testimony by undercover agent as to agent's recollection of conversation. *Quinn v. State*, 479 So. 2d 706 (Miss. 1985).

Cited in: *Avant v. State*, 910 So. 2d 695 (Miss. Ct. App. 2005).

ATTORNEY GENERAL OPINIONS

Section 63-1-71(2) and Section 41-29-139(c)(2)(A) are not in conflict; report of conviction for less than one ounce of marijuana must be sent to the Bureau of Narcotics pursuant to Section 41-29-139, and, if court is unable to collect the license of person convicted, court shall also cause report of conviction to be sent to Commissioner of Public Safety, Driver Improvement Division. *Lowe*, Sept. 16, 1992, A.G. Op. #92-0680.

Provisions and requirements of section, by their express terms, apply only to marijuana violations and certain records that must be maintained and periodically expunged by the Mississippi Bureau of Narcotics; provisions do not address records that local law enforcement may have. *Minor*, Dec. 9, 1992, A.G. Op. #92-0859.

RESEARCH REFERENCES

ALR. Entrapment to commit offense with respect to narcotics law. 33 A.L.R.2d 883.

Admissibility, in prosecution for illegal sale of narcotics, of evidence of other sales. 93 A.L.R.2d 1097.

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Review for excessiveness of sentence in narcotics case. 55 A.L.R.3d 812.

Conviction of possession of illicit drugs

found in premises of which defendant was in non-exclusive possession. 56 A.L.R.3d 948.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 A.L.R.3d 1319.

Validity and construction of statute creating presumption or inference of intent to sell from possession of specified quantity of illegal drugs. 60 A.L.R.3d 1128.

Drug addiction or related mental state as defense to criminal charge. 73 A.L.R.3d 16.

Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Prosecutions based upon alleged illegal possession of instruments to be used in violation of narcotics laws. 92 A.L.R.3d 47.

Competency of drug addict or user to identify suspect material as narcotic or controlled substance. 95 A.L.R.3d 978.

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana. 96 A.L.R.3d 225.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 A.L.R.4th 1128.

Burden of proof as to entrapment defense-state cases. 52 A.L.R.4th 775.

Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases. 83 A.L.R.4th 629.

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law. 4 A.L.R.5th 1.

Entrapment as defense to charge of selling or supplying narcotics where govern-

ment agents supplied narcotics to defendant and purchased them from him. 9 A.L.R.5th 464.

Validity, construction, and application of state "drug kingpin" statutes. 30 A.L.R.5th 121.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased. 34 A.L.R.5th 125.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child — state cases. 51 A.L.R.5th 425.

Validity, under Federal Constitution, of so-called "head shop" ordinances or statutes, prohibiting manufacture and sale of drug use related paraphernalia. 69 A.L.R. Fed. 15.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Propriety of instruction of jury on "conscious avoidance" of knowledge of nature of substance or transaction in prosecution for possession or distribution of drugs. 109 A.L.R. Fed. 710.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 263 et seq.

72 C.J.S., Poisons §§ 7 et seq.

Law Reviews. 1981 Mississippi Supreme Court Review: Criminal Law and Procedure. 52 Miss. L. J. 427, June 1982.

Practice References. Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-140. Fines and penalties; violation of Section 41-29-139.

(a) Except as otherwise authorized by the Uniform Controlled Substances Law, it is unlawful for any person to:

(1) Knowingly or intentionally receive or expend funds which he knows to be derived from the commission of a felony offense under the provisions of Section 41-29-139; or

(2) Finance or invest funds which he knows to be intended to further the commission of a felony under the provisions of Section 41-29-139.

(b) Any person who violates subsection (a) of this section is guilty of a felony and, upon conviction, may be sentenced to the custody of the State Department of Corrections for not more than five (5) years or fined not more than One Million Dollars (\$1,000,000.00), or both.

SOURCES: Laws, 1985, ch. 388, § 1, eff from and after July 1, 1985.

Cross References — Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Offense of aiding and abetting illegal possession of drugs or narcotics. 47 A.L.R.3d 1239.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 263 et seq.

Practice References. Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-141. Prohibited acts B; penalties.

It is unlawful for any person:

(1) Who is subject to Section 41-29-125 to distribute or dispense a controlled substance in violation of Section 41-29-137;

(2) Who is a registrant under Section 41-29-125 to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this article;

(4) To refuse a lawful entry into any premises for any inspection authorized by this article; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this article for the purpose of using these substances, or which is used for keeping or selling them in violation of this article.

Any person who violates this section shall, with respect to such violation, be subject to a civil penalty payable to the State of Mississippi of not more than twenty-five thousand dollars (\$25,000.00).

In addition to the civil penalty provided in the preceding paragraph, any person who knowingly or intentionally violates this section shall be guilty of a crime and upon conviction thereof may be confined for a period of not more than one (1) year or fined not more than one thousand dollars (\$1,000.00), or both.

SOURCES: Codes, 1942, § 6831-71; Laws, 1971, ch. 521, § 21; Laws, 1972, ch. 520, § 8, eff from and after passage (approved May 19, 1972).

Cross References — Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

JUDICIAL DECISIONS

1. In general.

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to

the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. *Wolf v. State*, 281 So. 2d 445 (Miss. 1973).

RESEARCH REFERENCES

ALR. Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Validity, construction, and effect of state statute regulating sale of counterfeit or

imitation controlled substances. 84 A.L.R.4th 936.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal

Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS. 72 C.J.S., Poisons §§ 7 et seq.

§ 41-29-142. Enhanced penalties for sale, etc. of controlled substances in, on or within specified distances of schools, churches and certain other buildings.

(1) Except as provided in subsection (f) of Section 41-29-139 or in subsection (2) of this section, any person who violates or conspires to violate Section 41-29-139(a)(1), Mississippi Code of 1972, by selling, bartering, transferring, manufacturing, distributing, dispensing or possessing with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance, in or on, or within one thousand five hundred (1,500) feet of, a building or outbuilding which is all or part of a public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater or within one thousand (1,000) feet of, the real property comprising such public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater shall, upon conviction thereof, be punished by the term of imprisonment or a fine, or both, of that authorized by Section 41-29-139(b) and, in the discretion of the court, may be punished by a term of imprisonment or a fine, or both, of up to twice that authorized by Section 41-29-139(b).

(2) Except as otherwise provided in subsection (f) of Section 41-29-139, any person who violates or conspires to violate Section 41-29-139(a)(1), Mississippi Code of 1972, by selling, bartering, transferring, manufacturing, distributing, dispensing or possessing with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance, in or on, or within one thousand five hundred (1,500) feet of, a building or outbuilding which is all or part of a public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater or within one thousand (1,000) feet of, the real property comprising such public or private elementary, vocational or secondary school, or any church, public park, ballpark, public gymnasium, youth center or movie theater after a prior conviction under subsection (1) of this section has become final, shall, upon conviction thereof, be punished by a term of imprisonment of not less than three (3) years and not more than life, and in the discretion of the court, may be punished by a term of imprisonment of up to three (3) times that authorized by Section 41-29-139(b), for a first offense, or a fine of up to three (3) times that authorized by Section 41-29-139(b), for a first offense, or both.

SOURCES: Laws, 1989, ch. 569, § 1; Laws, 1992, ch. 405, § 1; Laws, 1993, ch. 405, § 1, eff from and after passage (approved March 12, 1993).

Cross References — Penalties for distribution to persons under twenty-one years of age, see § 41-29-145.

Penalties for second and subsequent offenses, see § 41-29-147.

JUDICIAL DECISIONS

1. In general.
2. Indictment.
3. Findings by court.
4. Sufficient evidence.

1. In general.

Based upon defendant's plea, the trial court had the authority to sentence defendant up to sixty years in the custody of the Mississippi Department of Corrections (MDOC); the trial court sentenced defendant to fifteen years in the custody of the MDOC, with six years to serve, and the remaining nine years suspended, and as such, defendant's sentence was within the minimum and maximum sentences set forth by statute. *Sanchez v. State*, — So. 2d —, 2 So. 3d 780, 2009 Miss. App. LEXIS 65 (Miss. Ct. App. 2009).

Court rejected defendant's claim that the enhanced 10-year sentence imposed pursuant to Miss. Code Ann. § 41-29-142 upon his conviction for selling cocaine within 1,500 feet of a church in violation of Miss. Code Ann. § 41-29-139 was excessive. A pre-sentencing report was included in the record and the 10-year sentence was considerably less than the 30-year maximum provided in § 41-29-139, and defendant's sentence was well within the enhancement guidelines provided in Miss. Code Ann. § 41-29-142, which allowed a sentence of up to three times the sentence imposed under Miss. Code Ann. § 41-29-139. *Moore v. State*, 909 So. 2d 77 (Miss. Ct. App. 2005).

Defendant's sentence was not excessive, nor did it exceed the bounds of the penalty allowed under Miss. Code Ann. § 41-29-142; because the sentence was within the guidelines of the statute, it was not disproportionate to the crime charged, such that the appellate court would not disturb the sentence. *Hodges v. State*, 906 So. 2d 23 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184 (Miss. 2005).

Where defendant gave cocaine to another, who sold the cocaine to a buyer, defendant was properly convicted of sell-

ing cocaine, a Schedule II controlled substance, in violation of Miss. Code Ann. §§ 41-29-139(a)(1) and 41-29-142(1) because defendant's act was a constructive transfer. *Pratt v. State*, 870 So. 2d 1241 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant for sale of cocaine within fifteen hundred feet of a church; defendant was identified by the undercover officer as one of the persons who sold the cocaine, and two law enforcement officers testified that the drug transaction had occurred within fifteen hundred feet of a church. *Chambers v. State*, 878 So. 2d 153 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

This section requires proof of the presence of a building or an outbuilding. *Coleman v. State*, — So. 2d —, 1999 Miss. App. LEXIS 488 (Miss. Ct. App. July 27, 1999), aff'd, 786 So. 2d 397 (Miss. 2001).

2. Indictment.

Where defendant was charged with possession of a controlled substance with the intent to sell or distribute under Miss. Code Ann. § 41-29-139(a)(1), no prejudicial error occurred when the State was permitted to amend the indictment to allege that the crime was committed within 1,500 feet of a day care center instead of a park because the amendment did not change the crime for which defendant was charged but merely amended the allegations related to the enhancement provisions of Miss. Code Ann. § 41-29-142 to comport with the evidence that would be presented at trial. Further, because the indictment was amended six months before trial commenced, the defense was given sufficient notice to prepare and adjust their defense accordingly. *Tarver v. State*, — So. 2d —, 2009 Miss. App. LEXIS 40 (Miss. Ct. App. Jan. 27, 2009).

The fact that the indictment charged the defendant with the sale of marijuana within 1,500, rather than 1,000, feet of a

public park caused no prejudice to the defendant and, therefore, did not require the reversal of his conviction where the sale actually occurred inside a public park. *Coleman v. State*, 786 So. 2d 397 (Miss. 2001).

An indictment gave the defendant sufficient notice that he was being charged under this section for the sale of drugs in or on or within a public park and that if found guilty he could be subjected to an enhanced sentence, notwithstanding the contention that the indictment did not mention a building or outbuilding, but only charged the defendant with the sale of marijuana within 1500 feet of a named park. *Coleman v. State*, — So. 2d —, 1999 Miss. App. LEXIS 488 (Miss. Ct. App. July 27, 1999), *aff'd*, 786 So. 2d 397 (Miss. 2001).

3. Findings by court.

Although a conviction for the sale of a controlled substance, under Miss. Code Ann. § 41-29-139, was affirmed, defendant's rights under the Sixth Amendment were violated because he did not receive a jury hearing on the issue of a thirty-year sentence enhancement, pursuant to Miss. Code Ann. § 41-29-142, for selling a controlled substance within 1,500 feet of a church. *Brown v. State*, 995 So. 2d 698 (Miss. 2008).

Where the record revealed no attempt by the trial judge to explain his reasons for imposing a 60 year sentence under the statute, and the judge denied the defendant's attempts to submit a presentencing report, the case was remanded for consid-

eration of sentence. *Green v. State*, 762 So. 2d 810 (Miss. Ct. App. 2000).

The defendant's sentence would be reversed and remanded to allow for further explanation by the trial court where the defendant was sentenced to the 60 year maximum sentence and the trial judge's reasons were unclear concerning whether egregious circumstances existed to justify such a sentence. *White v. State*, 1999 Miss. App. LEXIS 535 (Miss. Ct. App. Aug. 17, 1999), *subst. op.*, 761 So. 2d 221 (Miss. Ct. App. 2000).

4. Sufficient evidence.

Defendant's sentence after being convicted for possession of 73.7 grams of marijuana with intent to distribute as a habitual offender was proper pursuant to Miss. Code Ann. §§ 41-29-142(1) and 99-19-81 where the circuit court was required by statute to sentence him to 40 years imprisonment without the possibility of parole and/or a \$60,000 fine, which is exactly what the circuit court did. *Foster v. State*, 928 So. 2d 873 (Miss. Ct. App. 2005), *cert. denied*, 929 So. 2d 923 (Miss. 2006).

Defendant's conviction for the sale of cocaine within 1,500 feet of a church in violation of Miss. Code Ann. §§ 41-29-139 and 41-29-142 was proper where the State offered sufficient testimony from two officers and an employee of the Mississippi Crime Lab to satisfy the requirement of Miss. R. Evid. 901(a) for establishing a proper chain of custody for admission of the cocaine at trial. *Johnson v. State*, 904 So. 2d 162 (Miss. 2005).

§ 41-29-143. Prohibited acts C; penalties.

It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except pursuant to an order form as required by Section 41-29-135;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person.

(3) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article; or

(4) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

Any person who violates this section is guilty of a crime and upon conviction may be confined for not more than one (1) year or fined not more than one thousand dollars (\$1,000.00) or both.

SOURCES: Codes, 1942, § 6831-72; Laws, 1971, ch. 521, § 22; Laws, 1977, ch. 375. § 1, eff from and after July 1, 1977.

Cross References — Suspension of driving privileges of person convicted of violations of Uniform Controlled Substance Law, see § 63-1-71.

JUDICIAL DECISIONS

1. In general.

Where in a single count indictment, possession and production of a controlled substance is charged conjunctively, such possession and production constitute aspects of a single transaction and the possession, having been merely incidental to

the production of the substance, does not constitute a charge of a separate or distinct offense, and consequently indictment charging defendant did possess and produce marijuana was not fatally defective. *Wolf v. State*, 281 So. 2d 445 (Miss. 1973).

RESEARCH REFERENCES

ALR. Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases. 83 A.L.R.4th 629.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Pre-

vention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS. 72 C.J.S., Poisons §§ 7 et seq.

Practice References. Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases.

§ 41-29-144. Acquiring or obtaining possession of controlled substance or prescription by misrepresentation, fraud and the like; penalty.

(1) It is unlawful for any person knowingly or intentionally to acquire or obtain possession or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

(2) It is unlawful for any person knowingly or intentionally to possess, sell, deliver, transfer or attempt to possess, sell, deliver or transfer a false, fraudulent or forged prescription of a practitioner.

(3) Any person who violates this section is guilty of a crime and upon conviction shall be confined for not less than one (1) year nor more than five (5) years and fined not more than one thousand dollars (\$1,000.00) or both.

SOURCES: Laws, 1977, ch. 375, § 2; Laws, 1980, ch. 336, eff from and after July 1, 1980.

JUDICIAL DECISIONS

1. In general.
2. Evidence held sufficient.
3. Jury instructions.

1. In general.

In defendant's trial for selling crack cocaine, the trial judge did not err in allowing the clearly spontaneous, unprovoked, and unsolicited comment of defendant while watching a videotape of the transaction at the police station, the undercover officer's testimony, that of the monitoring officer, and the physical evidence in conjunction with the videotape all of which showed that defendant's conviction was not against the overwhelming weight of the evidence. *Boose v. State*, 851 So. 2d 391 (Miss. Ct. App. 2003).

Trial judge's questioning of circuit clerk established that clerk had complied, or substantially complied, with statute with respect to random selection of jurors to try defendant charged with attempting to obtain controlled substance by misrepresentation or fraud. *Griffin v. State*, 494 So. 2d 376 (Miss. 1986).

At trial of one charged with attempting to obtain a controlled substance by misrepresentation or fraud, the lower court did not abuse its discretion in denying defendant's motion for a subpoena duces tecum, returnable instant, directed to a doctor who admitted, on cross-examination, that he kept an informal record of

medication prescribed to persons not admitted to hospital. *Griffin v. State*, 494 So. 2d 376 (Miss. 1986).

At defendant's trial on charge of attempting to obtain controlled substance by misrepresentation or fraud, remark of prosecutor, made during closing agreement, that defendant could have called handwriting experts as witnesses did not require a mistrial. *Griffin v. State*, 494 So. 2d 376 (Miss. 1986).

At defendant's trial on charge of attempting to obtain controlled substance by misrepresentation or fraud, lower court did not err in failing to give defendant's instructions on testimony by witness, who testifies under plea bargain agreement, and accomplice testimony, where the record failed to show any plea bargain, and accomplice testimony was covered in an instruction given by the court. *Griffin v. State*, 494 So. 2d 376 (Miss. 1986).

2. Evidence held sufficient.

Weight and sufficiency of the evidence supported defendant's conviction for obtaining a controlled substance by fraud; the evidence presented at trial revealed that defendant had made a call to a pharmacist pretending to be from a doctor's office, ordered a controlled substance, and later picked up the prescription, and the doctor testified that defendant had contacted her office requesting a refill of

Lorcet and that her office had denied defendant's request. *Irons v. State*, 886 So. 2d 726 (Miss. Ct. App. 2004), cert. denied, 887 So. 2d 183 (Miss. 2004).

3. Jury instructions.

Instruction regarding defendant aiding or assisting another in the offense was proper because it explained that an aider

and abetter was deemed under Mississippi law to be a principal to the offense of prescription forgery under Miss. Code Ann. § 41-29-144(2), and the jury instructions, when read together, appropriately informed the jury of the applicable law. *Rushing v. State*, 911 So. 2d 526 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

A conviction of prescription forgery does not disqualify one as a registered voter.

Salazar, April 7, 2000, A.G. Op. #2000-0169.

RESEARCH REFERENCES

ALR. Burden of proof as to entrapment defense — state cases. 52 A.L.R.4th 775.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases. 83 A.L.R.4th 629.

Minimum quantity of drug required to support claim that defendant is guilty of criminal "possession" of drug under state law. 4 A.L.R.5th 1.

Proper venue in prosecution under 21 USCS § 846 for attempt or conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 74 A.L.R. Fed. 669.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 141 et seq.

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

8 Am. Jur. Trials 573, Defense of Narcotics Cases, §§ 1 et seq.

CJS. 28 C.J.S., Drugs and Narcotics § 269.

72 C.J.S., Poisons §§ 7 et seq.

§ 41-29-145. Distribution to persons under age twenty-one.

Any person twenty-one (21) years of age or over who violates subsections (a) and (b) of Section 41-29-139 with reference to a controlled substance listed in Schedules I, II, III, IV and V as set out in Sections 41-29-113 through 41-29-121, inclusive, to a person under twenty-one (21) years of age may be punished by the fine authorized by Section 41-29-139, or by a term of imprisonment or confinement up to twice that authorized by said Section 41-29-139, or both, or he may be punished as provided in Section 41-29-142.

SOURCES: Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 250, § 9; Laws, 1981, ch. 502, § 6; Laws, 1989, ch. 569, § 3, eff from and after July 1, 1989.

Cross References — Prohibition of person convicted of crimes affecting children or other violent crimes from being licensed as foster parent or a foster home, see § 43-15-6.

RESEARCH REFERENCES

ALR. Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

LSD, STP, MDA, or other chemically synthesized hallucinogenic or psychedelic substances as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1284.

Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Burden of proof as to entrapment defense-state cases. 52 A.L.R.4th 775.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent

to distribute-state cases. 83 A.L.R.4th 629.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 172, 173.

4 Am. Jur. Proof of Facts 549, Drugs, Proof No. 1 (use of drug other than that called for in prescription).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts 391, Criminal Drug Addiction and Possession, Proof No. 2 (identification of a substance as a drug-testimony of expert).

CJS. 28 C.J.S., Drugs and Narcotics § 266.

§ 41-29-146. False representation of prescription or legend drug; penalty.

(1) It shall be unlawful for any person to sell, produce, manufacture or possess with the intent to sell, produce, manufacture, distribute or dispense any substance which is falsely represented to be a prescription or legend drug.

(2) The provisions of this section shall not apply to a law enforcement officer acting in the course and scope of his employment or to a medical practitioner, pharmacist or other person authorized to dispense or administer controlled substances.

(3) Any person who violates this section shall, upon conviction, be guilty of a felony and may be punished by confinement in the custody of the Department of Corrections for not more than five (5) years or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

SOURCES: Laws, 1982, ch. 415; Laws, 2009, ch. 532, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted “falsely represented to be a prescription or legend drug” for “falsely represented to be a controlled substance or which is falsely represented to be a counterfeit substance as defined in Section 41-29-105” in (1); and rewrote (3) to create a felony offense.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Jury instructions.

Only evidence defendant offered in support of his theory of defense was police officer’s testimony that he thought the substance defendant sold him was a “dummy” piece of cocaine and was not

sufficient to support an instruction on a lesser-included charge of false representation of a controlled substance under Miss. Code Ann. § 41-29-146. *Green v. State*, 2002 Miss. App. LEXIS 497 (Miss. Ct. App. Sept. 10, 2002), subst. op., 856 So. 2d

396 (Miss. Ct. App. 2003), rev'd in part and remanded, 884 So. 2d 733 (Miss. 2004).

Because proof of defendant's guilt of the elements for sale of a controlled substance in violation of Miss. Code Ann. § 41-29-

139 would not constitute proof of the elements of false representation in violation of Miss. Code Ann. § 41-29-146, a lesser-included offense jury instruction was not justified. *Green v. State*, 856 So. 2d 396 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state statute regulating sale of counter-

feit or imitation controlled substances. 84 A.L.R.4th 936.

§ 41-29-147. Second and subsequent offenses.

Except as otherwise provided in Section 41-29-142, any person convicted of a second or subsequent offense under this article may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.

SOURCES: Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 520, § 9; Laws, 1989, ch. 569, § 4, eff from and after July 1, 1989.

JUDICIAL DECISIONS

1. In general.
2. Sentence.

1. In general.

Defendant, who was convicted as a subsequent drug offender, was properly denied jury instructions on the theory of constructive possession because, although the instructions were an accurate expression of the law, the record revealed that there was a lack of evidence supporting such an instruction. *Watts v. State*, 974 So. 2d 940 (Miss. Ct. App. 2008).

Double jeopardy and collateral estoppel did not preclude the State from charging defendant with possession of cocaine, enhanced as a subsequent drug offender under Miss. Code Ann. § 41-29-147, which was the offense that was the basis for an unsuccessful petition to revoke his probation, because there are different issues and burdens of proof involved in a revocation hearing and a trial on the in-

dictment. A revocation hearing is conducted to enforce the court's order imposing conditions on a defendant under a suspended sentence, and the issue to be determined at trial on the indictment is whether the State has proven beyond a reasonable doubt the elements of the charge; therefore, collateral estoppel does not apply. *Oliver v. State*, 922 So. 2d 36 (Miss. Ct. App. 2006).

Once the jury had resolved any differences in the evidence, the trial court and appellate court were obligated to give substantial deference to the jury's decision; the jury chose to believe the testimony of the witnesses implicating defendant in the crime, their credibility was not impeached such that no rational juror could possibly accept their statements as true. *Forrest v. State*, 876 So. 2d 400 (Miss. Ct. App. 2003).

Appellate court found that Miss. Code Ann. § 41-29-147, the statute under

which the defendant was sentenced, was constitutional. *Cotten v. State*, 817 So. 2d 639 (Miss. Ct. App. 2002).

A 60-year sentence for a conviction of sale of cocaine did not violate the Eighth Amendment's prohibition against cruel and unusual punishment, even though the defendant was convicted of selling only a small amount of cocaine, where the defendant was given a 30-year sentence pursuant to § 41-29-139(b)(1) for his conviction and the sentence was then doubled pursuant to § 41-29-147 because the defendant had previously been convicted of possession of marijuana, since the sentence was within the statutory guidelines and the legislature has called for stiff penalties for drug offenders as a matter of public policy. *Campbell v. Campbell*, 618 So. 2d 116 (Miss. 1993).

In order for the sentence-doubling provision of § 41-29-147 (which authorizes doubling of a sentence for a second or subsequent offense under the Uniform Controlled Substance Act) to be applicable, the indictment need not recite that the prior convictions were had pursuant to the act since that statute by its own terms is applicable "if, prior to his conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to narcotic drugs." *Jones v. State*, 523 So. 2d 957 (Miss. 1988).

For purposes of § 41-29-147, a sentencing judge may consider prior convictions even though the indictment does not state the prior convictions. *Burns v. State*, 344 So. 2d 1189 (Miss. 1977).

Indictment charging sale of drugs did not violate prohibition against double jeopardy by including the information that the defendant had been previously convicted on a separate charge since, in order for punishment to be enhanced for a second conviction, an indictment authorizing enhanced punishment must include both the principal charge and a charge of the previous convictions. *Ellis v. State*, 326 So. 2d 466 (Miss. 1976).

Where the indictment failed to set forth the jurisdiction in which the previous convictions were obtained and the nature or description of the offenses constituting the previous convictions, it was defective in

its attempt to charge the defendant with previous convictions and the trial court erred when it inflicted enhanced punishment under this section; these defects were not waived even though the defendant failed to demur to the indictment before trial. *Lay v. State*, 310 So. 2d 908 (Miss. 1975).

In view of the fact that a previous conviction of possession of marijuana was not charged in an indictment, defendant could not be sentenced as a second offender following his conviction on charges of the sale of marijuana. *Ladnier v. State*, 273 So. 2d 169 (Miss. 1973).

2. Sentence.

Prohibition against the admissibility of evidence of a previous conviction based on a nolo contendere plea in another case did not apply to sentencing enhancements and a prior misdemeanor could properly be used to indict defendant as a second and subsequent offender. *Jackson v. State*, — So. 2d —, 1 So. 3d 921, 2008 Miss. App. LEXIS 590 (Miss. Ct. App. 2008).

Defendant's sentence as a habitual offender after he was convicted of the possession of cocaine and the possession of hydromorphone was constitutional because he was sentenced to 108 years under Miss. Code Ann. § 41-29-147, and that sentence was within the statutory limits. *Roach v. State*, — So. 2d —, 7 So. 3d 932, 2007 Miss. App. LEXIS 538 (Miss. Ct. App. 2007).

Post-conviction relief was denied without an evidentiary hearing where defendant pled guilty to a drug charge because the trial court informed him of the consequences of the plea, despite an attorney's prediction that he would receive less time; moreover, a 34-year sentence was not disproportionate since it was within the limits of Miss. Code Ann. § 41-29-313 and Miss. Code Ann. § 41-29-147. *Bridges v. State*, 973 So. 2d 246 (Miss. Ct. App. 2007).

Defendant was indicted and sentenced as a subsequent offender under Miss. Code Ann. § 41-29-147 and as a habitual offender under Miss. Code Ann. § 99-19-81 for the crime of sale of a controlled substance; drug sentences were distinguished from sentences for crimes that required a judge to impose a sentence

reasonably expected to be less than life in the absence of a jury recommending a life sentence. *Hudderson v. State*, 941 So. 2d 221 (Miss. Ct. App. 2006).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon; because he had been twice previously convicted of felonies, and sentenced to separate terms of at least one year, the maximum base term of imprisonment for possession, eight years under Miss. Code Ann. § 41-29-139(c)(1)(B), Miss. Code Ann. § 99-19-81, applied; because he also possessed a firearm, that sentence was doubled to 16 years, and because he had been previously convicted of a drug offense, the trial judge doubled the sentence again to arrive at a 32-year sentence. *Mosley v. State*, 930 So. 2d 459 (Miss. Ct. App. 2006).

Although defendant's sixty-year sentence for possession of marijuana was harsh, in light of his prior felony controlled substance violations and the fact that he was an habitual offender for possession and delivery of marijuana, the sentence was proper. *Tate v. State*, 946 So. 2d 376 (Miss. Ct. App. 2006).

Defendant's 35-year enhanced sentence for selling cocaine was not excessive as the sentence imposed fell within the statutory range of available sentences: defendant was sentenced to serve 35 years, and the Miss. Code Ann. §§ 41-29-139 (b)(1), -147 provided for a maximum sentence of up to 60 years. *McDougle v. State*, 918 So. 2d 768 (Miss. Ct. App. 2005).

In defendant's case, the trial judge not only imposed the maximum sentence as required by statute, but also doubled the sentence and fines under Miss. Code Ann. § 41-29-147; however, it was obvious that the judge did not consider defendant's age when he imposed the sentence and that he did not take defendant's life expectancy into consideration when he doubled the sentence as per § 41-29-147. The sentence of 30 years for the possession of two grams but less than 10 grams of methamphetamine conviction was proper, but the discretionary imposition of consecutive terms of 60 years for the other conviction

of two counts of possession of methamphetamine with intent to distribute, without appropriate on-the-record findings, was excessive; thus, resentencing taking into account defendant's life expectancy was required. *Cannon v. State*, 918 So. 2d 734 (Miss. Ct. App. 2005).

Defendant's effective sentence of 60 years without parole for a drug offense where none of his prior convictions involved crimes of violence was within the statutory guidelines prescribed by the legislature under Miss. Code Ann. §§ 41-29-147 and 99-19-81; additionally, although harsh, defendant's sentence was not grossly disproportionate to his crime. It was within the legislature's prerogative to determine that three crimes such as those committed by defendant could result in a sentence of 60 years without parole or chance of early release; thus, defendant's sentence did not violate the federal or state constitutional prohibitions of cruel and unusual punishment. *Tate v. State*, 912 So. 2d 919 (Miss. 2005).

Reference to both Miss. Code Ann. §§ 99-19-81 and 41-29-147 in the indictment was sufficient to give defendant notice that he could be sentenced under either and gave him a fair opportunity to present a defense. It is not for the defendant to choose between two available sentencing options, both of which have been included in the charges against him. *Henderson v. State*, 878 So. 2d 246 (Miss. Ct. App. 2004).

Defendant's 30-year sentence for a drug transaction was not unduly disproportionate in light of defendant's two prior convictions, and the fact that defendant qualified as a habitual offender. *Alexander v. State*, 875 So. 2d 261 (Miss. Ct. App. 2004).

Defendant's conviction for the sale of cocaine and his enhanced 40-year sentence were both proper under Miss. Code Ann. §§ 41-29-147 and 99-19-81 where the trial court's opening remarks on voir dire did not constitute reversible error and defendant did not object at trial; further, defendant failed to establish ineffective assistance of counsel; counsel negotiated a plea that defendant refused and succeeded in having the trial court dismiss the portion of the indictment dealing

with the sale occurring within 1,500 feet of a public park. *Easter v. State*, 878 So. 2d 10 (Miss. 2004).

Denial of post-conviction relief was affirmed because the imposition of a 15-year sentence for the offense of transfer of cocaine was well within the 60-year maximum sentence. The offense of transfer of cocaine carried a maximum penalty of 30-years in prison, the enhanced penalty statute allowed the sentence to be doubled where a defendant's conviction was a second or subsequent drug offense, and because it was the inmate's fourth drug conviction, his sentence could be doubled. *Falconer v. State*, 873 So. 2d 163 (Miss. Ct. App. 2004).

Defendant's 15-year prison sentence for a possession of cocaine conviction was upheld because there was no merit to defendant's contention that the sentence

was disproportionate. Because defendant was a second-time drug offender, sentence was subject to being doubled. *Moore v. State*, 873 So. 2d 129 (Miss. Ct. App. 2004).

Trial court's decision not to give defendant a "volume discount" but to impose 30- and 20-year consecutive sentences in two separate drug sale cases was proper, as the sentences were within the legal limits and were not grossly disproportionate. *Heatherly v. State*, 864 So. 2d 1036 (Miss. Ct. App. 2004).

Sentence imposed for the sale of marijuana was not excessive or disproportionate because the sentence was within the limits set forth by Miss. Code Ann. § 41-29-147; Miss Code Ann. § 41-29-139 did not apply because defendant was a second or subsequent offender. *Fields v. State*, 840 So. 2d 796 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 199 et seq.

Law Reviews. 1982 Mississippi Supreme Court Review: Criminal Law and Procedure: Amendments to the Uniform

Criminal Rules of Circuit Court Practice. 53 Miss. L. J. 162, March 1983.

Practice References. Defense of Narcotics Cases (Matthew Bender).

§ 41-29-148. Burden of proof of exemptions and exceptions; presumption as to holding of registration or order form.

(1) It is not necessary for the state to negate any exemption in this article in any complaint, indictment or other pleading or in any trial, hearing, or other proceeding under said article. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this article, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

SOURCES: Codes, 1942, § 6831-90; Laws, 1972, ch. 520, § 16, eff from and after passage (approved May 19, 1972).

JUDICIAL DECISIONS

1. In general.

The state was not required to prove the absence of a prescription in a prosecution for possession of a controlled substance, as the defendant had the burden of establish-

ing any exemption or exception. *Smith v. State*, 527 So. 2d 660 (Miss. 1988).

Where defendant's conviction for possession with intent to deliver controlled substances was reversed for insufficient

evidence, the case was remanded for resentencing of a lesser included offense, where defendant failed to establish he was entitled to exemption from prosecu-

tion for possession of controlled substances pursuant to a valid prescription under § 41-29-148. *Bryant v. State*, 427 So. 2d 131 (Miss. 1983).

RESEARCH REFERENCES

ALR. Burden of proof as to entrapment defense — state cases. 52 A.L.R.4th 775.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 196, 222.

8 Am. Jur. Trials 573, Defense of Narcotics Cases § 35.

CJS. 72 C.J.S., Poisons § 7.

Practice References. Defense of Narcotics Cases (Matthew Bender).

Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-149. Suspended sentences; eligibility for parole; re-sentencing.

(a) Regardless of the penalties provided heretofore for the violation of any section or portion of this article, the judge of the court of jurisdiction of any defendant may, in his discretion, suspend such penalty, penalties, or portions thereof, for any person charged with a first offense.

(b) A person convicted under this article or under any prior law superseded by this article for a violation of the law regarding controlled substances shall be eligible for parole just as in any other criminal conviction as provided by Section 47-7-3.

(c) Any person who was convicted and/or who is still serving a sentence in the Mississippi State Penitentiary for a first offense under any prior law superseded by this article, may petition the court of original jurisdiction for resentencing under the provisions of this article.

(d) Any person previously indicted under a prior law for violation of any law regarding controlled substances but not yet sentenced shall be sentenced under the provisions of this article provided that the sentence imposed is not greater than that provided under said prior law.

(e) For the purposes of the sentencing provisions of this article, a first offense shall be deemed to be and include any offense, offenses, act or acts prohibited by said law, or any prior law superseded by said law, committed prior to a first indictment under said law or under prior law superseded by said law.

SOURCES: Codes, 1942, § 6831-74; Laws, 1971, ch. 521, § 24; Laws, 1972, ch. 520, § 9; Laws, 1977, ch. 482, § 2; Laws, 1981, ch. 502, § 7, eff from and after July 1, 1981.

Cross References — Application of definition of first offender to penalty for marijuana offenses, see § 41-29-139(b)(1).

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

For another provision as to the effect of the Uniform Controlled Substances Law on prosecutions for violations of prior law, see § 41-29-173(a).

JUDICIAL DECISIONS

1. In general.
2. First time offender.

1. In general.

Because Miss. Code Ann. § 41-29-149 did not require the trial judgment to take into account defendant's first offender status and defendant was likely not a first time drug trafficker, the judge's choice to sentence defendant to the maximum sentence of 30 years was not grossly disproportional or inaccurate. *Maldonado v. State*, 796 So. 2d 247 (Miss. Ct. App. 2001).

Where a jury had convicted defendant of knowingly and intentionally selling a controlled substance, there was no indication that the trial judge abused his discretion in not applying § 41-29-149. *Johnson v. State*, 461 So. 2d 1288 (Miss. 1984).

Decision in *Worthy v. State* (Miss) 308 So. 2d 921, that juvenile first offenders on drug charges who are sentenced to confinement are to be confined in either the Mississippi State Hospital at Whitfield or the East Mississippi State Hospital at Meridian does not preclude the trial judge, when sentencing juvenile first offender on a drug charge, from utilizing other legislative provisions which would promote his rehabilitation. *Davis v. State*, 323 So. 2d 741 (Miss. 1975).

Where on remand for resentencing, the trial court sentenced defendant, this being his first offense, to 3½ years in the state penitentiary, but included in the resentencing order a proviso that when defendant shall have served one year of the sentence, he should be placed on probation and parole as to the remaining 2½ year-period for a term of 5 years, inasmuch as the period of probation did not exceed the limit set in Code 1942 § 4004-25, the judgment would be affirmed. *Pettus v. Alexander*, 278 So. 2d 778 (Miss. 1973).

Where defendant did not have more than one ounce of marijuana in his possession, he had served one year on the county farm under a sentence to serve one year on the county farm and 4 years' probation, and under the new law defendant could not have received a sentence of

more than one year on the county farm and a fine of \$1,000, the defendant was entitled to be resentenced and, since he had served the maximum jail sentence required by law, he was to be released and no additional fine could have been required of him. *Royalty v. McAdory*, 278 So. 2d 464 (Miss. 1973).

Where the defendant was convicted of the sale of LSD prior to the effective date of the Controlled Substances Law but was not sentenced until after it took effect, and his sentence to a term of imprisonment exceeded that provided by the Law, the action would be remanded for resentencing in accordance with the provisions of the Law as provided in Code 1942, § 6831-74(g) [now subsection (c) of Code 1972, § 41-29-149]. *Kyzer v. State*, 271 So. 2d 390 (Miss. 1972).

In view of the fact that the legislature had enacted a comprehensive narcotics law known as the Uniform Controlled Substances Law which materially reduced the penalty imposed on first offenders, and had also repealed Code 1942, § 6866, under which the defendant was sentenced to seven years following a conviction for the unlawful sale of LSD, while the conviction of the defendant, who was 22 years of age and a first offender, would be affirmed, the case would be remanded to the trial court for an imposition of a sentence in accordance with the provisions of the new law. *Smith v. State*, 248 So. 2d 436 (Miss. 1971).

2. First time offender.

Appellate court overruled the petitioner's argument that his twenty-five year sentence for possession of marihuana with intent to sell was disproportionate because the petitioner had other drug charges pending against him; thus, he did not fit the definition of a first offender, and the petitioner was indicted for possession of more than a kilogram but less than five kilos of marihuana, and he potentially could have received up to a thirty year sentence. *White v. State*, 921 So. 2d 402 (Miss. Ct. App. 2006).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty

dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and pos-

sessed a small amount of methamphetamine, the trial judge had discretion under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. *Passman v. State*, 937 So. 2d 17 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

RESEARCH REFERENCES

ALR. Propriety of imposing special parole term as part of sentence, under 21 USCS § 846, for a conspiracy to violate Comprehensive Drug Abuse Prevention and Control Act of 1970. 48 A.L.R. Fed. 767.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 199 et seq.

Practice References. Defense of Narcotics Cases (Matthew Bender).

§ 41-29-150. Participation in drug rehabilitation programs; probation.

(a) Any person convicted under Section 41-29-139 may be required, in the discretion of the court, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of probation or suspension of sentence, to attend a course of instruction conducted by the bureau, the state board of health, or any similar agency, on the effects, medically, psychologically and socially, of the misuse of controlled substances. Said course may be conducted at any correctional institution, detention center or hospital, or at any center or treatment facility established for the purpose of education and rehabilitation of those persons committed because of abuse of controlled substances.

(b) Any person convicted under Section 41-29-139, who is found to be dependent upon or addicted to any controlled substance shall be required, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of parole, probation or suspension of sentence, to receive medical treatment for such dependency or addiction. The regimen of medical treatment may include confinement in a medical facility of any correctional institution, detention center or hospital, or at any center or facility established for treatment of those persons committed because of a dependence or addiction to controlled substances.

(c) Those persons previously convicted of a felony under Section 41-29-139 and who are now confined at the Mississippi State Hospital at Whitfield, Mississippi, or at the East Mississippi State Hospital at Meridian, Mississippi, for the term of their sentence shall remain under the jurisdiction of the Mississippi Department of Corrections and shall be required to abide by all reasonable rules and regulations promulgated by the director and staff of said institutions and of the department of corrections. Any persons so confined who shall refuse to abide by said rules or who attempt an escape or who shall escape

shall be transferred to the state penitentiary or to a county jail, where appropriate, to serve the remainder of the term of imprisonment; this provision shall not preclude prosecution and conviction for escape from said institutions.

(d)(1) If any person who has not previously been convicted of violating Section 41-29-139, or the laws of the United States or of another state relating to narcotic drugs, stimulant or depressant substances, other controlled substances or marihuana is found to be guilty of a violation of subsection (c) or (d) of Section 41-29-139, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed three (3) years, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the bureau solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the penalties prescribed under this article for second or subsequent conviction, or for any other purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of such person and discharge of proceedings against him under paragraph (1) of this subsection, or with respect to a person who has been convicted and adjudged guilty of an offense under subsection (c) or (d) of Section 41-29-139, or for possession of narcotics, stimulants, depressants, hallucinogens, marihuana, other controlled substances or paraphernalia under prior laws of this state, such person, if he had not reached his twenty-sixth birthday at the time of the offense, may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he had not reached his twenty-sixth birthday at the time of the offense, or that such person had satisfactorily served his sentence or period of probation and parole, and that he had not reached his twenty-sixth birthday at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such

arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or trial in response to any inquiry made of him for any purpose.

(e) Every person who has been or may hereafter be convicted of a felony offense under Section 41-29-139 and sentenced under Section 41-29-150(c) shall be under the jurisdiction of the Mississippi Department of Corrections.

(f) It shall be unlawful for any person confined under the provisions of subsection (b) or (c) of this section to escape or attempt to escape from said institution, and upon conviction said person shall be guilty of a felony and shall be imprisoned for a term not to exceed two (2) years.

(g) It is the intent and purpose of the legislature to promote the rehabilitation of persons convicted of offenses under the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-74(j-p); Laws, 1972, ch. 520, § 9; Laws, 1977, ch. 495, § 1; Laws, 1978, ch. 522, § 1; Laws, 1981, ch. 502, § 8, eff from and after July 1, 1981.

Cross References — Use of persons convicted of an offense for work on highways or roads, see § 65-1-8.

Authority for use of persons convicted of drug offenses for work on state highway projects, see § 65-1-8.

Provision whereby person who has been convicted of a misdemeanor before reaching his twenty-third birthday, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

JUDICIAL DECISIONS

1. In general.

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases—youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea

under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the “within 6 months prior to” March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. *Caldwell v. State*, 564 So. 2d 1371 (Miss. 1990).

Where a jury had convicted the defendant of knowingly and intentionally selling a controlled substance, there was no indication that the trial judge abused his discretion in not applying § 41-29-150. *Johnson v. State*, 461 So. 2d 1288 (Miss. 1984).

Decision in *Worthy v. State* (Miss) 308 So. 2d 921, that juvenile first offenders on drug charges who are sentenced to confinement are to be confined in either the Mississippi State Hospital at Whitfield or the East Mississippi State Hospital at Meridian does not preclude the trial judge, when sentencing a juvenile first offender on a drug charge, from utilizing other legislative provisions which would promote his rehabilitation. *Davis v. State*, 323 So. 2d 741 (Miss. 1975).

Subsection (d) of this statute must be construed as mandatory requirement that juvenile first offenders, convicted under Code 1972 § 41-29-139(a), (b), or (c), shall be sentenced to confinement in state hospitals. *Worthy v. State*, 308 So. 2d 921 (Miss. 1975).

The trial court erred in sentencing a 20-year-old first offender, convicted under Code 1972 § 41-29-139(a), to a term of six years in the state penitentiary. *Applegate v. State*, 301 So. 2d 853 (Miss. 1974).

ATTORNEY GENERAL OPINIONS

An offender who has been convicted of a nonviolent offense and who has had a previous felony charge expunged under subdivision (d)(2) of this section may qual-

ify as a first offender for parole eligibility purposes under § 47-7-3(g). *Epps*, Nov. 7, 2003, A.G. Op. 03-0589.

RESEARCH REFERENCES

ALR. Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 A.L.R.3d 1192.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 204.

§ 41-29-151. Penalties to be additional; barring of prosecutions.

Any penalty imposed for violation of this article is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

If a violation of this article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

SOURCES: Codes, 1942, § 6831-73; Laws, 1971, ch. 521, § 23, eff from and after passage (approved April 16, 1971).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 200.

41 Am. Jur. Trials 383, Habeas Corpus: Pretrial Rulings (double jeopardy).

§ 41-29-152. Enhancement of penalty for violations of Uniform Controlled Substances Law while in possession of firearm; "firearm" defined.

(1) Any person who violates Section 41-29-313 or who violates Section 41-29-139 with reference to a controlled substance listed in Schedule I, II, III, IV or V as set out in Sections 41-29-113 through 41-29-121, Mississippi Code of

1972, inclusive, and has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be punished by a fine up to twice that authorized by Section 41-29-139 or 41-29-313, or by a term of imprisonment or confinement up to twice that authorized by Section 41-29-139 or 41-29-313, or both.

(2) "Firearm" means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

SOURCES: Laws, 1994, ch. 527, § 1; Laws, 2000, ch. 452, § 1, eff from and after passage (approved Apr. 18, 2000.)

JUDICIAL DECISIONS

1. In general.
2. Firearm possession.

1. In general.

Elements for the charge of sale of cocaine as listed in Miss. Code Ann. § 41-29-139 were necessarily included to prove the crime of sale of cocaine while in possession of a firearm under Miss. Code Ann. § 41-29-152, as § 41-29-152 simply provided for an enhanced penalty for the commission of a crime under § 41-29-139, but it was still necessary that each element of the charged offense under § 41-29-139 be proven; the jury was properly instructed that defendant could be found guilty of sale of cocaine, a lesser-included offense to the charge of sale of cocaine while in possession of a firearm, and thus pursuant to Miss. Code Ann. § 99-19-5(1), there was no merit to the argument that the indictment against was not valid because a lesser-included offense was not stated. *Davis v. State*, 950 So. 2d 1073 (Miss. Ct. App. 2007).

Defendant's enhanced sentence of 60 years, a two million dollar fine, and fifty dollars in restitution, pursuant to Miss. Code Ann. § 41-29-152, for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute, was not disproportionate to the crime committed and did not amount to cruel and unusual punishment in violation of the Eighth Amendment because his sentence did not exceed the statutory limits. Even though defendant was a first time offender and possessed a small amount of methamphetamine, the trial judge had discretion

under Miss. Code Ann. § 41-29-149 to reduce the statutory sentence for first time offenders; however, the trial court was not required to take into account the first time offender status when sentencing. *Passman v. State*, 937 So. 2d 17 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

An enhanced sentence under the statute may be imposed only where the trier of fact finds the presence of a weapon; thus, in a jury trial, an enhanced sentence may not be imposed by the judge without a determination by the jury that the defendant possessed a weapon. *Hampton v. State*, 760 So. 2d 803 (Miss. Ct. App. 2000).

2. Firearm possession.

Because defendant's sentence of 60 years with 47 years to serve in the custody of Mississippi Department of Corrections fell within the statutory limits, as it was enhanced for his possession of a firearm while he possessed a Schedule II controlled substance, no further analysis under Solem was required and it was affirmed on appeal. *Barlow v. State*, — So. 2d —, 8 So. 3d 196, 2008 Miss. App. LEXIS 471 (Miss. Ct. App. 2008).

Trial court did not err in denying defendant's motion for a new trial or for judgment notwithstanding the verdict because there was sufficient evidence to support his convictions for possession of methamphetamine with intent to distribute and possession of a firearm while intending to distribute under Miss. Code Ann. § 41-29-115 and Miss. Code Ann. § 41-29-152; defendant admitted to the undercover of-

ficer that he had drug paraphernalia in his home and the officers found a .380 loaded handgun, a police scanner, foil, and scales along with drugs during a search of defendant's home, which were relevant factors to be considered by the jury when deciding if defendant was involved in the distribution of drugs. *Passman v. State*, 937 So. 2d 17 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

Three different statutory enhancements were properly used in sentencing defendant to 32 years' imprisonment for cocaine possession while possessing a firearm and firearm possession by a convicted felon. *Mosley v. State*, 930 So. 2d 459 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

Am Jur. 25 *Am. Jur.* 2d, *Drugs and Controlled Substances* §§ 199 et seq.

§ 41-29-153. Forfeitures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this article or in violation of Article 5 of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article or in violation of Article 5 of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this subsection, however:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article;

B. No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

C. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

D. A conveyance is not subject to forfeiture for a violation of Section 41-29-139(c)(2)(A), (B) or (C);

(5) All money, deadly weapons, books, records, and research products and materials, including formulas, microfilm, tapes and data which are

used, or intended for use, in violation of this article or in violation of Article 5 of this chapter;

(6) All drug paraphernalia as defined in Section 41-29-105(v); and

(7) Everything of value, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

A. No property shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

B. Neither personal property encumbered by a bona fide security interest nor real estate encumbered by a bona fide mortgage, deed of trust, lien or encumbrance shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of the secured party or the interest of the mortgagee, holder of a deed of trust, lien or encumbrance by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(b) Property subject to forfeiture may be seized by the bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the 'state in a criminal injunction or forfeiture proceeding based upon this article;

(3) The bureau, the board, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, or highway patrolmen, or the State Board of Pharmacy have probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy have probable cause to believe that the property was used or is intended to be used in violation of this article.

(c) Controlled substances listed in Schedule I of Section 41-29-113 that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state.

Controlled substances listed in the said Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(d) Species of plants from which controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115 may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(e) The failure, upon demand by the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board of Pharmacy, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

SOURCES: Codes, 1942, § 6831-79; Laws, 1971, ch. 521, § 29; Laws, 1972, ch. 520, § 12; Laws, 1979, ch. 473, § 5; Laws, 1981, ch. 502, § 9; Laws, 1982, ch. 323, § 3; Laws, 1985, ch. 388, § 2. Reenacted without change, Laws, 1996, ch. 511, § 1; Laws, 1999, ch. 417, § 1; Laws, 2005, ch. 463, § 1; Laws, 2007, ch. 327, § 1, eff from and after July 1, 2007.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (a)(3) and (a)(4) was corrected by substituting “paragraph (1) or (2) of this subsection” for “paragraph (1) or (2) of this section.”

Amendment Notes — The 2007 amendment added “or in violation of Article 5 of this chapter” at the end of (a)(5); and substituted “subsection” for “paragraph” in (a)(7)A. and (a)(7)B.

Cross References — Accrual of forfeitures upon adoption of constitution, see Miss. Const. Art. 15, § 281.

Disposition of proceeds of sale of forfeited weapons generally, see § 45-9-151.

Forfeiture of property other than controlled substance, raw material or paraphernalia, see § 41-29-176.

Other narcotic drug regulations, Article 5 of this chapter, see §§ 41-29-301 et seq.

JUDICIAL DECISIONS

1. In general.
2. Drug paraphernalia.
3. Innocent owner defense.

1. In general.

Rational trier of fact could have found by a preponderance of the evidence that the funds found in defendant's car were the product of or instrumentalities of violations of the Uniform Controlled Substances Law and were found in close proximity to drug distributing paraphernalia. *Cowan v. Miss. Bureau of Narcotics*, — So.

2d —, 2 So. 3d 759, 2009 Miss. App. LEXIS 61 (Miss. Ct. App. 2009).

Owner failed to file a statutorily sufficient petition to recover seized property and contest forfeiture within 30 days after receipt of the notice of intention to forfeit, because the petition was only signed by the owner's attorney, and the appellate court overruled the owner's assertion that the amended answer after the 30 days passed cured the deficiency. *1999 Buick Century v. State*, 966 So. 2d 841 (Miss. Ct. App. 2007).

Forfeiture of a vehicle because it was purchased with drug funds was proper under Miss. Code Ann. § 41-29-153(a)(4), (7) because the alleged owner was but a straw man involving the ownership of a vehicle; the state proved by a preponderance of the evidence that the true owner went to the dealership to check out the truck, paid the initial cash for it, and paid for the maintenance on the vehicle. 2004 Chevrolet Pickup v. State, 970 So. 2d 186 (Miss. Ct. App. 2007).

The forfeiture of \$177 found on the defendant's person was not grossly disproportionate to the offense charged where the defendant was found in possession of crack cocaine while also in possession of a firearm. Luckett v. State, 797 So. 2d 339 (Miss. Ct. App. 2001).

Vehicles used or intended for use in transportation of controlled substances, among other things, are subject to forfeiture. One Ford Mustang Convertible Bearing VIN No. 1FACP45EXLF192944 State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905 (Miss. 1996).

Property owner must file answer to petition for forfeiture; once this is done, burden is on petitioner to prove propriety of forfeiture by a preponderance of the evidence. One Ford Mustang Convertible Bearing VIN No. 1FACP45EXLF192944 State ex rel. Clay County Sheriff's Dep't, 676 So. 2d 905 (Miss. 1996).

The evidence was sufficient to support a forfeiture of the defendant's real property where numerous drug-related arrests for cocaine trafficking had been made at the property, members of the defendant's family had been arrested in her presence for possession of crack cocaine, police officers had seized drugs and related paraphernalia from her home in her presence, crack cocaine was found in plain view in her home, drug paraphernalia was dispersed throughout the house, and \$8,000 in loose cash was found in the defendant's purse. 335 W. Ash St. v. City of Jackson, 664 So. 2d 194 (Miss. 1995).

Property owners must do "all that is reasonably expected to prevent the proscribed use of the property, with an emphasis more on the term 'reasonable' than on the term 'all'"; while a property owner "need not take heroic or vigilante mea-

sures to rid his property of narcotics activity," "reasonable affirmative conduct" to prevent the property from being used to facilitate illegal drug transactions is required. 335 W. Ash St. v. City of Jackson, 664 So. 2d 194 (Miss. 1995).

A trial court erred in granting forfeiture of \$107,000 found in a gift-wrapped box in the trunk of an automobile during a routine traffic stop, because the evidence was insufficient to connect the money to any criminal activity where no drugs or drug paraphernalia were found, and there was no evidence, other than the large sum of money, indicating that the defendant fit a drug courier profile. One Hundred Seven Thousand Dollars (\$107,000.00) U.S. Currency v. State, 643 So. 2d 917 (Miss. 1994).

Where a property owner files a verified answer denying that the property is subject to forfeiture, the burden is on the State to prove to the contrary; the State must demonstrate by a preponderance of the evidence that the owner had knowledge of or consented to the illegal use of his or her property for drug-related activities. Marsh v. Gruver, 642 So. 2d 381 (Miss. 1994).

The evidence was insufficient to demonstrate a vehicle owner's knowledge of or consent to her brother's use of her vehicle to transport a controlled substance, and therefore forfeiture of the vehicle after the brother's arrest for possession of cocaine was improper, even though the owner was aware that her brother had previously been arrested on drug possession charges and she frequently allowed him to use her vehicle, where she filed a verified answer denying that her vehicle was subject to forfeiture, and she had warned her brother against using her car for drug activities, since facts merely creating a suspicion that the owner of a vehicle had knowledge of the driver's illegal activity are inadequate to support a forfeiture. Marsh v. Gruver, 642 So. 2d 381 (Miss. 1994).

A trial judge did not err in finding that only \$35.00 of marked "buy money" given to the defendants by law enforcement officers in purchasing marijuana was forfeitable, even though the \$35.00 was in a jar containing a total of \$479.72 and the jar was in a house trailer in which mari-

juana was also found, where the record was silent as to the exact location of the jar and its proximity to the marijuana, and therefore it could not be said that the trial court erred in failing to find that the cash was in such close proximity to the marijuana as to invoke the statutory presumption of forfeitability; "close proximity" is not defined in terms of a measured distance, and controlled substances anywhere in a residence are not considered as a matter of law to be in "close proximity" to any currency also found in that residence. *City of Meridian v. Hodge*, 632 So. 2d 1309 (Miss. 1994).

There was insufficient proof of the necessary nexus between \$1,270 in cash found in a suspect's pocket and crack cocaine found in his car to warrant seizure of the money where the cocaine was in a match box on the passenger side of the console, there was no evidence of furtive gestures or any other suggestion that the suspect had handled the package, the suspect denied that the money was in close proximity to the cocaine, he offered a reason why he was carrying the money on his person, and there was no evidence that the suspect was a drug dealer; in the absence of direct proof of trafficking, where there is uncontradicted proof of an alternate source, the presumption in § 41-29-153(a)(7) that drugs and money found in close proximity are forfeitable has been rebutted and disappears. *Neely v. State ex rel. Tate County*, 628 So. 2d 1376 (Miss. 1993).

Objects carried on the person are mobile and, in the context of § 41-29-153(a)(7), should not ordinarily be viewed as in "close proximity" to anything not also on the person, unless the circumstances are such that the fact finder can reasonably infer that the object not found on the person had been on the person immediately prior to discovery, at a time when the object of forfeiture was also on the person. *Neely v. State ex rel. Tate County*, 628 So. 2d 1376 (Miss. 1993).

A trial judge abused his discretion when he entered an agreed order and final judgment *ex parte*, which disposed of a complaint for forfeiture under § 41-29-153, absent the consent and approval of the defendant or his attorney. *Lee v. State*, 607 So. 2d 128 (Miss. 1992).

In conviction for possession of marijuana with intent to distribute, mailing drug proceeds, and being felon in possession of 3 firearms, seizure of the defendant's automobile under subsection (a)(4), without a warrant, by government officials who intended to seek forfeiture of automobile, was proper on basis of subsections (b)(1) and (4), as state narcotics agents had seen defendant using car to facilitate transportation of what they believed to be drug proceeds to Columbus, Mississippi post office, and the agents were executing search warrant at time car was seized. *United States v. Hamilton*, 931 F.2d 1046 (5th Cir. 1991).

\$149,700 in currency found in the defendant's vehicle was forfeitable under § 41-29-153(a)(7) where marijuana and marijuana residue were found throughout the vehicle, the defendant admitted that the marijuana belonged to him, the defendant clearly violated the Mississippi Uniform Controlled Substance Law, the defendant told the trial court that he grew marijuana in Texas, the defendant was stopped on his way back from a known drug-trafficking city, and the defendant failed to explain why the money was in close proximity to a controlled substance. *Jones v. State ex rel. Mississippi Dep't of Pub. Safety*, 607 So. 2d 23 (Miss. 1991).

The evidence was sufficient to support a finding that \$16,700 cash found in the defendant's automobile had been used or was intended for use in violation of the Uniform Controlled Substances Law (§§ 41-29-101 et seq.), and was therefore subject to forfeiture, where the cash was in mostly 20 dollar and 50 dollar denominations, it was found in a "Crown Royal" velvet bag, plastic "Ziploc" bags, 2 spare tires, and 2 rolls of gray duct tape were also found in the defendant's automobile, and an employee of the Mississippi Bureau of Narcotics testified that it was common to see 20 dollar and 50 dollar denominations used in drug trafficking and that the other items found in the defendant's automobile were also commonly used in narcotics trafficking. *Hickman v. State ex rel. Mississippi Dep't of Pub. Safety*, 592 So. 2d 44 (Miss. 1991).

The forfeiture of a defendant's automobile pursuant to § 41-29-153(a)(4) was

improper where the defendant deliberately intended not to use his automobile when he purposely took his nephew's car to meet a third party in order to procure cocaine. *Bechtel Corp. v. Phillips*, 591 So. 2d 814 (Miss. 1991).

2. Drug paraphernalia.

Court erred in determining that cash found during a police search of appellant's bedroom was forfeitable under Miss. Code Ann. § 41-29-153(a)(7) on the ground that it was found in close proximity to drug paraphernalia because no evidence supported the finding that a brass container attached to a Brillo pad, a piece of foil with holes in it, and plastic bags qualified as drug paraphernalia. *Evans v. City of Aberdeen*, 925 So. 2d 850 (Miss. Ct. App. 2005), *aff'd*, 926 So. 2d 181 (Miss. 2006).

3. Innocent owner defense.

Preponderance of the evidence did not support a finding that appellant claimant knew of or consented to her son's use of her vehicle for drug-related activities; after the claimant and her husband suspected that the son was stealing the husband's medications, they took numerous measures to stop him from doing so (including having the medicine held at the post office and carrying the medicine with them in a bag), and the son did not have a driver's license and was not allowed to drive the vehicle. *1994 Mercury Cougar v. Tishomingo County*, 970 So. 2d 744 (Miss. Ct. App. 2007).

Straw person was not "owner" of automobile for purposes of innocent owner defense to forfeiture. *One Ford Mustang Convertible Bearing VIN No. 1FACP45EXLF192944* State ex rel. Clay County Sherriff's Dep't, 676 So. 2d 905 (Miss. 1996).

If owner of property proves illegal act was committed or omitted without his knowledge or consent, then property is not subject to forfeiture. *One Ford Mustang*

Convertible Bearing VIN No. 1FACP45EXLF192944 State ex rel. Clay County Sherriff's Dep't, 676 So. 2d 905 (Miss. 1996).

Definition of "owner" in Motor Vehicle Title Law establishes prima facie case of ownership, for purposes of innocent owner defense to forfeiture proceeding; this presumption is rebuttable. *One Ford Mustang Convertible Bearing VIN No. 1FACP45EXLF192944* State ex rel. Clay County Sherriff's Dep't, 676 So. 2d 905 (Miss. 1996).

Son's occasional possession and use of father's automobile does not subject automobile to forfeiture when son transports marijuana in automobile and sells marijuana to state narcotics agent where record title is in father, who testifies without contradiction that son was not permitted use of vehicle at time of sale of marijuana and that father had no knowledge of illegal use of vehicle by son. *Saik v. State ex rel. Miss. Bureau of Narcotics*, 473 So. 2d 188 (Miss. 1985).

If the owner of an automobile used to facilitate the illegal transportation, sale, receipt, possession, or concealment of certain controlled substances files a verified answer in response to a petition for forfeiture pursuant to § 41-29-153, denying that his automobile is subject to forfeiture, § 41-29-179 places upon the state the burden of proving the propriety of the forfeiture by a preponderance of the evidence; moreover, facts merely creating a suspicion that the owner had knowledge of the driver's illegal activity are inadequate to support a forfeiture and, accordingly, the facts that the vehicle owner's husband occasionally used her automobile, that he had access to her keys, and that she knew of his eight-year-old drug-related conviction were insufficient to warrant forfeiture of her car. *Ervin v. State ex rel. Mississippi Bureau of Narcotics*, 434 So. 2d 1324 (Miss. 1983).

ATTORNEY GENERAL OPINIONS

Money in forfeiture accounts can be used to increase law enforcement resources by purchasing liens or other interests of innocent third parties in forfeited personal property so that the property can

be released for the use of the law enforcement agency. *Magée*, Jan. 16, 1992, A.G. Op. #91-0778.

A city could institute a forfeiture action with regard to cash found on the person of

a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other relatives. Strahan, Nov. 10, 2000, A.G. Op. #2000-0638.

A prosecutor's actions in initiating and pursuing a civil proceeding for the forfeiture of criminal property are entitled to absolute immunity. Hedgepath, Apr. 17, 2003, A.G. Op. #02-0592.

RESEARCH REFERENCES

ALR. Sufficiency of prosecution proof that substance defendant is charged with possessing or selling, or otherwise unlawfully dealing in, is marijuana. 75 A.L.R.3d 717.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 A.L.R.4th 496.

Forfeatability of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Timeliness of institution of proceedings for forfeiture under Uniform Controlled Substances Act or similar statute. 90 A.L.R.4th 493.

Effect of forfeiture proceedings under Uniformed Controlled Substances Act or similar statute on lien against property subject to forfeiture. 1 A.L.R.5th 317.

Forfeatability of property, under Uniform Controlled Substances Act or similar statute, where property or evidence supporting forfeiture was illegally seized. 1 A.L.R.5th 346.

Application of forfeiture provisions of Uniform Controlled Substances Act of similar statute where drugs were possessed for personal use. 1 A.L.R.5th 375.

Forfeatability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small. 6 A.L.R.5th 652.

Delay in setting hearing date or in holding hearing as affecting forfeatability under Uniform Controlled Substances Act or similar statute. 6 A.L.R.5th 711.

Validity, construction, and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances. 31 A.L.R.5th 760.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant is-

sued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child — state cases. 51 A.L.R.5th 425.

Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law. 104 A.L.R.5th 229.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Proximity of asset to drugs, paraphernalia, or records. 115 A.L.R.5th 403.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Odor of drugs. 116 A.L.R.5th 325.

Forfeiture of personal property used in illegal manufacture, processing, or sale of controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881). 59 A.L.R. Fed. 765.

Who is exempt from forfeiture of drug proceeds under "innocent owner" provision of 21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]. 109 A.L.R. Fed. 322.

Who is exempt from forfeiture of real property under "innocent owner" provision of 21 USCS § 881(a)(7). 110 A.L.R. Fed. 569.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 233, 235 et seq.

72 C.J.S., Poisons § 7.

Lawyers' Edition. Warrantless search of marijuana fields by police officers held permissible under open fields doctrine. 80 L. Ed. 2d 214.

Law Reviews. 1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-154. Disposition of seized controlled substances and paraphernalia.

Any controlled substance or paraphernalia seized under the authority of this article or any other law of Mississippi or of the United States, shall be destroyed, adulterated and disposed of or otherwise rendered harmless and disposed of, upon written authorization of the director, after such substance or paraphernalia has served its usefulness as evidence or after such substance or paraphernalia is no longer useful for training or demonstration purposes.

A record of the disposition of such substances and paraphernalia and the method of destruction or adulteration employed along with the names of witnesses to such destruction or adulteration shall be retained by the director.

No substance or paraphernalia shall be disposed of, destroyed or rendered harmless under the authority of this section without an order from the director and without at least two (2) officers or agents of the bureau present as witnesses.

SOURCES: Codes, 1942, § 6831-93; Laws, 1972, ch. 520, § 19; Laws, 1982, ch. 323, § 4; Laws, 1988, ch. 448, eff from and after July 1, 1990.

Editor's Note — Laws of 1992, ch. 453, § 1, amended Laws of 1988, ch. 448, § 2, changing the effective date of chapter 448 from July 1, 1988, to July 1, 1990.

Cross References — Procedure involved in disposing of property seized under this chapter, see §§ 41-29-177 through 41-29-183.

Disposition of seized property under the Uniform Controlled Substances Law, see §§ 41-29-177 et seq.

Court order directing destruction of seized property, see § 41-29-181.

JUDICIAL DECISIONS

1. In general.

Where, in the process of determining what drug or drugs were contained in LSD tablet sold by defendant to agent, it was reasonably necessary to consume the entire tablet in the process of determining what drug or drugs were contained therein, and there was no proof of an attempt by the state to exhaust the tablet in order to deprive defendant of the right to inspection and analysis, there was no

denial of due process requiring dismissal of charges. *Poole v. State*, 291 So. 2d 723 (Miss. 1974), cert. denied, 419 U.S. 1019, 95 S. Ct. 492, 42 L. Ed. 2d 292 (1974).

The purpose of § 41-29-154 is to authorize the state to destroy drugs intentionally after such substances are no longer needed for evidence, and there is no indication that the statute should be construed so as to prohibit the exhaustion of the substance during chemical analysis.

Poole v. State, 291 So. 2d 723 (Miss. 1974), cert. denied, 419 U.S. 1019, 95 S. Ct. 492, 42 L. Ed. 2d 292 (1974).

ATTORNEY GENERAL OPINIONS

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration

purposes under §§ 41-29-154 and 41-29-181. Genin, April 16, 1999, A.G. Op. #99-0169.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 233, 235 et seq.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

Defense of Narcotics Cases (Matthew Bender).

Gurule and Guerra, The Law of Asset Forfeiture (Michie).

§ 41-29-155. Injunctions.

The trial courts of this state shall have jurisdiction to restrain or enjoin violations of this article.

The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

SOURCES: Codes, 1942, § 6831-77; Laws, 1971, ch. 521, § 27, eff from and after passage (approved April 16, 1971).

Cross References — Injunctions, generally, see §§ 11-13-1 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 194.

Practice References. Smith, Prosecu-

tion and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-157. Administrative inspection warrants and search warrants.

(a) Issuance and execution of administrative inspection warrants and search warrants shall be as follows, except as provided in subsection (c) of this section:

(1) A judge of any state court of record, or any justice court judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this article or rules thereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a

valid public interest in the effective enforcement of this article or rules thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant. All such warrants shall be served during normal business hours;

(2) A search warrant shall issue only upon an affidavit of a person having knowledge or information of the facts alleged, sworn to before the judge or justice court judge and establishing the grounds for issuing the warrant. If the judge or justice court judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building or conveyance to be searched, the purpose of the search, and, if appropriate, the type of property to be searched, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a person authorized by Section 41-29-159 to execute it;

(C) Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified, and if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any;

(E) Direct that it be served and designate the judge or magistrate to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge or justice court judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the appropriate state court for the judicial district in which the inspection was made.

(b) The Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this article are required to keep records; and

(B) Places including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under this article are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued in accordance with the conditions imposed in this section, an officer or employee designated by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the State Board of Optometry may:

(A) Inspect and copy records required by this article to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this article; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

(c) Any agent of the bureau authorized to execute a search warrant involving controlled substances, the penalty for which is imprisonment for more than one (1) year, may, without notice of his authority and purpose, break

open an outer door or inner door, or window of a building, or any part of the building, if the judge issuing the warrant:

(1) Is satisfied that there is probable cause to believe that:

(A) The property sought may, and, if such notice is given, will be easily and quickly destroyed or disposed of; or

(B) The giving of such notice will immediately endanger the life or safety of the executing officer or another person; and

(2) Has included in the warrant a direction that the officer executing the warrant shall not be required to give such notice.

Any officer acting under such warrant shall, as soon as practical, after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Search warrants which include the instruction that the executing officer shall not be required to give notice of authority and purpose as authorized by this subsection shall be issued only by the county court or county judge in vacation, chancery court or by the chancellor in vacation, by the circuit court or circuit judge in vacation, or by a justice of the Mississippi Supreme Court.

This subsection shall expire and stand repealed from and after July 1, 1974, except that the repeal shall not affect the validity or legality of any search authorized under this subsection and conducted prior to July 1, 1974.

SOURCES: Codes, 1942, § 6831-76; Laws, 1971, ch. 521, § 26; Laws, 1972, ch. 520, § 11; Laws, 1981, ch. 502, § 14; Laws, 1992, ch. 580, § 5; Laws, 2001, ch. 470, § 4; Laws, 2005, ch. 404, § 8, eff from and after July 1, 2005.

Cross References — Constitutional provision for search and seizure, see Miss. Const Art. 3, § 23.

Authority of state board of pharmacy to inspect facilities and records of pharmacy, drug manufacturer or wholesaler, see § 73-21-107.

JUDICIAL DECISIONS

1. In general.
2. Invalid search warrant.
3. Exigent circumstances.

1. In general.

While Miss. Code Ann. § 41-29-157(a)(3) clearly dictated defendant should have received a copy of the warrant, the supreme court has never held that failure to follow this procedure constituted reversible error or voided an otherwise valid search. *Chester v. State*, 935 So. 2d 976 (Miss. 2006).

Probable cause existed for the issuance of a search warrant for a defendant's residence, in spite of the defendants' argument that an informant's personal observation of marijuana at the residence 2 weeks earlier was stale and too remote,

where 2 narcotics agents saw a sale of marijuana, which came from one of the defendants and from the house in question on the day of the search. *Williams v. State*, 583 So. 2d 620 (Miss. 1991).

A defendant in a criminal proceeding has the right, under the Fourth and Fourteenth Amendments of the U.S. Constitution, to challenge the truthfulness of factual statements made in an affidavit supporting a search warrant subsequent to the ex parte issuance of such warrant provided: (1) There are allegations of deliberate falsehood or of reckless disregard for the truth and such allegations are accompanied by an offer of proof; (2) Portions of the warrant affidavit that are claimed to be false are specifically pointed out and accompanied by a statement of

supporting reasons; (3) Sworn affidavits or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), on remand, 398 A.2d 783 (Del. 1979).

The judgment of the trial court in allowing a search warrant to be introduced would not be reversed merely because there was a conflict in the testimony as to whether or not a copy was delivered to the defendant. An abuse of judicial discretion must be shown by the great weight of the testimony. *Wood v. State*, 322 So. 2d 462 (Miss. 1975).

A return two days after the warrant was served was not a breach of the statutory requirements that warrants should be promptly returned. *Roberts v. Mississippi State Hwy. Comm'n*, 309 So. 2d 161 (Miss. 1975).

2. Invalid search warrant.

Miss. Code Ann. § 41-29-157(a)(2) requires the affiant's and the affidavit's presence before the issuing magistrate before a search warrant may properly

issue and under Miss. Code Ann. § 99-25-15, the form of an affidavit for a search warrant indicates the presence of the affiant at issuance; thus, the telephonic search warrant was invalid and the search of defendant's apartment was a warrantless search, but the officers, who did not intend to make an arrest, but only to preserve evidence, acted reasonably in exigent circumstances. *White v. State*, — So. 2d —, 2002 Miss. LEXIS 311 (Miss. Oct. 24, 2002).

3. Exigent circumstances.

Officers had probable cause to believe that defendant was dealing marijuana, they were attempting to prevent the destruction of evidence instead of effectuating arrest and seizure, and they reasonably believed in good faith that they had a valid telephonic search warrant and were acting reasonably in the midst of exigent circumstances; thus, the trial court, even in the absence of a state statute allowing telephonic search warrants, properly upheld the search as a reasonable warrantless search. *White v. State*, — So. 2d —, 2002 Miss. LEXIS 311 (Miss. Oct. 24, 2002).

RESEARCH REFERENCES

ALR. Permitting unlawful use of narcotics in private home as criminal offense. 54 A.L.R.3d 1297.

Odor of narcotics as providing probable cause for warrantless search. 5 A.L.R.4th 681.

Propriety of stop and search by law enforcement officers based solely on drug courier profile. 37 A.L.R.5th 1.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Validity of police roadblocks or checkpoints for purpose of discovery of illegal narcotics violations. 82 A.L.R.5th 103.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am Jur. 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons § 194.

1 Am. Jur. Trials 555, Locating and Preserving Evidence in Criminal Cases, §§ 30-50.

2 Am. Jur. Trials 171, Investigating Particular Crimes, §§ 60-63.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.

(a) Any officer or employee of the Mississippi Bureau of Narcotics, investigative unit of the State Board of Pharmacy, investigative unit of the

State Board of Medical Licensure, investigative unit of the State Board of Dental Examiners, investigative unit of the Mississippi Board of Nursing, investigative unit of the State Board of Optometry, any duly sworn peace officer of the State of Mississippi, any enforcement officer of the Mississippi Department of Transportation, or any highway patrolman, may, while engaged in the performance of his statutory duties:

- (1) Carry firearms;
- (2) Execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;
- (3) Make arrests without warrant for any offense under this article committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a crime; and
- (4) Make seizures of property pursuant to this article.

(b) As divided among the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry, the primary responsibility of the illicit street traffic or other illicit traffic of drugs is delegated to agents of the Mississippi Bureau of Narcotics. The State Board of Pharmacy is delegated the responsibility of regulating and checking the legitimate drug traffic among pharmacists, pharmacies, hospitals, nursing homes, drug manufacturers, and any other related professions and facilities with the exception of the medical, dental, nursing, optometric and veterinary professions. The State Board of Medical Licensure is responsible for regulating and checking the legitimate drug traffic among physicians, podiatrists and veterinarians. The Mississippi Board of Dental Examiners is responsible for regulating and checking the legitimate drug traffic among dentists and dental hygienists. The Mississippi Board of Nursing is responsible for regulating and checking the legitimate drug traffic among nurses. The State Board of Optometry is responsible for regulating and checking the legitimate drug traffic among optometrists.

(c) The provisions of this section shall not be construed to limit or preclude the detection or arrest of persons in violation of Section 41-29-139 by any local law enforcement officer, sheriff, deputy sheriff or peace officer.

(d) Agents of the bureau are authorized to investigate the circumstances of deaths which are caused by drug overdose or which are believed to be caused by drug overdose, and health-care providers, coroners and law enforcement officers shall notify the bureau of any death caused by a drug overdose within twenty-four (24) hours.

(e) Any person who shall impersonate in any way the director or any agent, or who shall in any manner hold himself out as being, or represent himself as being, an officer or agent of the Mississippi Bureau of Narcotics shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 6831-75; Laws, 1971, ch. 521, § 25; Laws, 1972, ch. 520, § 10; Laws, 1981, ch. 502, § 15; Laws, 1983, ch. 488, § 38; Laws, 1999, ch. 417, § 2; Laws, 2001, ch. 470, § 5; Laws, 2005, ch. 404, § 9; Laws, 2007, ch. 311, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment added the language following the second “drug overdose” at the end of (d).

Cross References — Bureau of narcotics, generally, see §§ 41-29-107 et seq.

Powers of special contract investigator or agent retained by the director of the bureau of narcotics, see § 41-29-112.

Issuance of search warrants, see § 41-29-157.

Mississippi Highway Safety Patrol, generally, see §§ 45-3-1 et seq.

State board of dental examiners, generally, see §§ 73-9-1 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

Under Section 41-29-159, agents of the Mississippi Bureau of Narcotics have the authority to execute a grand jury *capias* and arrest defendants indicted for viola-

tions of the Uniform Controlled Substances Law. Jones, September 9, 1996, A.G. Op. #96-0622.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 189 et seq.
CJS. 72 C.J.S., Poisons § 9.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-160. Payments to informers; disposition of moneys expended for purchase of controlled substances.

The director is authorized to pay any person such sum or sums of money as he may deem appropriate for information concerning a violation of this article from funds appropriated for the bureau of narcotics.

Moneys expended from the funds of the bureau for the purchase of controlled substances, and subsequently recovered shall be returned to the account from which they were originally drawn for such purpose. Detailed records and accounts of the use and disposition of such funds shall be kept by the director.

SOURCES: Codes, 1942, § 6831-91; Laws, 1972, ch. 520, § 17, eff from and after passage (approved May 19, 1972).

JUDICIAL DECISIONS

1. In general.

Conviction for sale of marijuana may be based upon evidence provided by confidential informant who is former drug offender and is paid on contingency fee basis

so long as full facts and circumstances of fee arrangement are disclosed to jury and witness is subject to cross-examination. *Williams v. State*, 463 So. 2d 1064, 57 A.L.R.4th 633 (Miss. 1985).

RESEARCH REFERENCES

ALR. Adverse presumption or inference based on state's failure to produce or examine informant in criminal prosecution — modern cases. 80 A.L.R.4th 547.

§ 41-29-161. Bonds of bureau officers and employees.

Any officer or employee of the Mississippi Bureau of Drug Enforcement who is authorized to investigate, carry firearms, serve search warrants, and do all things as set forth in this article shall prior to entering upon the discharge of his duties enter into a good and sufficient surety bond in the sum of ten thousand dollars (\$10,000.00) with a surety company authorized and doing business within the State of Mississippi. The said bond herein is conditioned upon the faithful performance of the duties of his office. All premiums shall be paid as are other expenses of the bureau.

SOURCES: Codes, 1942, § 6831-84; Laws, 1971, ch. 521, § 34, eff from and after passage (approved April 16, 1971).

Cross References — “Mississippi Bureau of Drug Enforcement” means the bureau of narcotics, see § 41-29-105(d).

§ 41-29-163. Judicial review of final determinations, findings and conclusions.

All final determinations, findings and conclusions of the board, the bureau or the State Board of Pharmacy under this article are final and conclusive decisions of the matters involved. Except as otherwise provided by Section 41-29-176, any person aggrieved by the decision may obtain review of the decision in the chancery court.

SOURCES: Codes, 1942, § 6831-80; Laws, 1971, ch. 521, § 30; Laws, 1972, ch. 520, § 13; Laws, 1988, ch. 474, § 2, eff from and after July 1, 1988.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 196. license to another — by existing license holder).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq. (petition or application — for judicial review of licensing authority's grant of a 16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43-46, 48 (revocation or suspension).

§ 41-29-165. Judicial review of convictions and orders.

Any person being aggrieved by any conviction or order of any board or commission authorized under this article shall have a right to appeal from said order or conviction to the circuit court of the county of the residence of the defendant or of the county where the offense was committed. Said appeal shall

be tried de novo. Appeals taken under this article shall be perfected as all other appeals to the circuit court.

SOURCES: Codes, 1942, § 6831-85; Laws, 1971, ch. 521, § 35, eff from and after passage (approved April 16, 1971).

§ 41-29-167. Cooperative arrangements.

(a) The State Board of Medical Licensure, the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the United States Drug Enforcement Administration by establishing a centralized unit to accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes; and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information and evidence received from the United States Drug Enforcement Administration relating to the regulatory functions of this article, including results of inspections conducted by it may be relied and acted upon by the Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry in the exercise of their regulatory functions under this article.

SOURCES: Codes, 1942, § 6831-78; Laws, 1971, ch. 521, § 28; Laws, 1983, ch. 522, § 16; Laws, 2001, ch. 470, § 6; Laws, 2005, ch. 404, § 10, eff from and after July 1, 2005.

Cross References — State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19-32.

§ 41-29-168. Required reports.

(1) Every sheriff, chief of police or constable or other peace officer in this state and the identification bureau of the highway safety patrol is hereby required to report to the bureau all arrests, incidences and information involving or connected with controlled substances.

(2) The owner, manager, practitioner, or any other person having possession or custody of controlled substances or of premises on which controlled substances are stored or located, whether or not such person is a registrant under Section 41-29-125, is hereby required to report to the bureau any theft, burglary, robbery or attempted theft, burglary or robbery of such premises or substance, or the mysterious disappearance of any controlled substance within forty-eight (48) hours of the discovery of such occurrence or disappearance.

(3) The director shall promulgate appropriate procedures and shall supply forms to facilitate the reports as required by subsections (1) and (2) of this section.

(4) It shall be unlawful for any person required to submit reports under subsection (2) of this section to omit to do so or to knowingly submit a false or incorrect report, in whole or in part, and upon conviction such person shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and may be confined for not more than thirty (30) days.

SOURCES: Codes, 1942, § 6831-89; Laws, 1972, ch. 520, § 15, eff from and after July 1, 1972.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-29-169. Drug abuse education programs.

The Mississippi Bureau of Drug Enforcement and state board of education shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

SOURCES: Codes, 1942, § 6831-81; Laws, 1971, ch. 521, § 31, eff from and after passage (approved April 16, 1971).

Cross References — State board of education, generally, see §§ 37-1-1 et seq.

Establishment of State Board of Mental Health and State Department of Mental Health in connection with services provided for drug dependent persons, see §§ 41-4-1 et seq.

“Mississippi Bureau of Drug Enforcement” meaning the bureau of narcotics, see § 41-29-105(d).

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

§ 41-29-171. Research programs on misuse and abuse of controlled substances.

(a) The Mississippi Bureau of Narcotics, the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the State Board of Optometry shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this article they may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this article;

(B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances;

(3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(b) The Mississippi Bureau of Narcotics and the State Board of Education may enter into contracts for educational and research activities without performance bonds.

(c) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

SOURCES: Codes, 1942, § 6831-82; Laws, 1971, ch. 521, § 32; Laws, 1983, ch. 522, § 17; Laws, 2001, ch. 470, § 7; Laws, 2005, ch. 404, § 11, eff from and after July 1, 2005.

Cross References — “Mississippi Bureau of Drug Enforcement” meaning the bureau of narcotics, see § 41-29-105(d).

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

State board of dental examiners, see § 73-9-7.

State board of medical licensure, see §§ 73-43-1 et seq.

§ 41-29-173. Effect of Uniform Controlled Substances Law on pending proceedings.

(a) Prosecutions for any violations under prior laws shall not be affected or abated by the provisions of this article. The penalty for any such violations shall be prescribed in accordance with subsection (d) of Section 41-29-149.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 19, 1972, are not affected by this article.

(c) All administrative proceedings pending under prior laws which are superseded by this article shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 19, 1972. Any substance controlled under prior law which is not listed within Schedules I through V, being Sections 41-29-113 through 41-29-121, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy and state board of medical licensure shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled substance prior to May 19, 1972, and who are registered or licensed by the state.

(e) This article applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 19, 1972.

SOURCES: Codes, 1942, § 6831-83; Laws, 1971, ch. 521, § 33; Laws, 1972, ch. 520, § 14; Laws, 1981, ch. 502, § 16, eff from and after July 1, 1981.

Cross References — Sentencing or resentencing of persons indicted or convicted under prior law, see § 41-29-149.

JUDICIAL DECISIONS

1. In general.

Where the punishment for a violation involving the sale of marijuana was reduced under the Uniform Controlled Substances Law of 1971, which became effective April 16, 1971, the imposition of a punishment for an April 12, 1971, violation under the provisions of the 1971 Law would not be within the prohibition against enactment of ex post facto laws.

Moore v. State, 264 So. 2d 414 (Miss. 1972).

Under subsection (a) of Code 1942, § 6831-83, providing that the penalty for violations occurring prior to April 16, 1971, the effective date of the Uniform Controlled Substances Law of 1971, was to be prescribed in accordance with the 1971 Law, it was not inappropriate to refer to the 1971 Law in an indictment

charging the sale of marijuana on April 2, 1971, since, if the sale of marijuana was not a violation under the 1971 Law, there

would be no penalty to prescribe. *Alston v. State*, 258 So. 2d 436 (Miss. 1972).

RESEARCH REFERENCES

ALR. Who is exempt from forfeiture of drug proceeds under "innocent owner" provision of 21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]. 109 A.L.R. Fed. 322.

Who is exempt from forfeiture of real property under "innocent owner" provi-

sion of 21 USCS § 881(a)(7). 110 A.L.R. Fed. 569.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-175. Continuation of regulations.

Any orders and rules promulgated under any law affected by this article and in effect on April 16, 1971, and not in conflict with the provisions of this article shall continue in effect until modified, superseded or repealed.

SOURCES: Codes, 1942, § 6831-86; Laws, 1971, ch. 521, § 36, eff from and after passage (approved April 16, 1971).

RESEARCH REFERENCES

ALR. Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

§ 41-29-176. Forfeiture of property other than controlled substance, raw material or paraphernalia.

(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Ten Thousand Dollars (\$10,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2), Mississippi Code of 1972.

(3) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

- (a) A description of the property;
- (b) The approximate value of the property;
- (c) The date and place of the seizure;
- (d) The connection between the property and the violation of the Uniform Controlled Substances Law;
- (e) The instructions for filing a request for judicial review; and
- (f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 474, § 1; Laws, 1996, ch. 511, § 2, eff from and after July 1, 1996.

Cross References — Accrual of forfeitures upon adoption of constitution, see Miss. Const. Art. 15, § 281.

Review by the chancery court, see § 41-29-163.

Disposition of property other than controlled substances, raw materials, and paraphernalia, see § 41-29-177.

Procedure for disposition of property other than controlled substance, raw material, or paraphernalia, see § 41-29-179.

JUDICIAL DECISIONS

1. In general.
2. Contest of forfeiture.

1. In general.

When a forfeiture is adjudicated in conjunction with criminal proceedings, the contraband money should be deposited into the county's general fund pursuant to Art 14 § 261 of the Mississippi Constitution and is subject to the usual accounting and audit procedures of the county and/or State; in those instances where criminal proceedings are never brought, or in cases

where the forfeiture proceedings are not adjudicated in conjunction with a criminal trial, the statutory provisions of §§ 41-29-176 through 41-29-181 will prevail. *Bell v. State*, 623 So. 2d 267 (Miss. 1993).

The forfeitures provided for in §§ 41-29-176 through 41-29-185 are civil in nature, rather than criminal, and therefore do not conflict with Article 14, § 261 of the Mississippi Constitution. *State ex rel. Miss. Bureau of Narcotics v. Lincoln County*, 605 So. 2d 802 (Miss. 1992).

2. Contest of forfeiture.

Owner failed to file a statutorily sufficient petition to recover seized property and contest forfeiture within 30 days after receipt of the notice of intention to forfeit, because the petition was only signed by the owner's attorney, and the appellate court overruled the owner's assertion that the amended answer after the 30 days passed cured the deficiency. 1999 Buick Century v. State, 966 So. 2d 841 (Miss. Ct. App. 2007).

City's notice of intent to seize an owner's pickup truck met the notice requirements of Miss. Code Ann. § 41-29-176(4); the notice contained instructions for contesting the forfeiture, with which the owner complied, and which the city timely filed in the circuit court, and the owner's rights to contest the forfeiture were pre-

served and executed. Fason v. City of Winona, 909 So. 2d 163 (Miss. Ct. App. 2005).

A petition to contest a forfeiture was not timely filed, notwithstanding the petitioner's assertion that he was not served with a notice of intention to forfeit property on the date of his arrest, where the notice was dated on the date of his arrest and the sheriff's return which accompanied the notice indicated that the notice was served on the date of his arrest. Craig v. North Mississippi Narcotics Unit, 762 So. 2d 349 (Miss. Ct. App. 2000).

M.R.C.P. 6(b) does not authorize a trial court to enlarge the 30 day period provided by this section for the filing of a petition to contest the forfeiture of property. Craig v. North Mississippi Narcotics Unit, 762 So. 2d 349 (Miss. Ct. App. 2000).

ATTORNEY GENERAL OPINIONS

When there is no contest to an administrative forfeiture, the law enforcement agency may have an agreement with the county prosecutor, the district attorney, or some other attorney to represent it in the administrative forfeiture. Ready, June 16, 2000, A.G. Op. #2000-0302.

There is no need to have a judge sign the declaration of forfeiture under the administrative forfeiture procedures; the

declaration of forfeiture needs merely to be signed by the attorney representing the seizing law enforcement agency. Ready, June 16, 2000, A.G. Op. #2000-0302.

The declaration of forfeiture may be filed immediately after the order of dismissal has been executed, provided the 30 days allowed for filing a petition has expired. Knochel, July 25, 2006, A.G. Op. 06-0290.

RESEARCH REFERENCES

ALR. Forfeiture of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 A.L.R.4th 637.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Forfeiture of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small. 6 A.L.R.5th 652.

Delay in setting hearing date or in holding hearing as affecting forfeiture under Uniform Controlled Substances Act or similar statute. 6 A.L.R.5th 711.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7)). 104 A.L.R. Fed. 288.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 233, 235 et seq.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-177. Procedure for disposition of seized property; petition of forfeiture; inquiry into ownership; failure to discover owner.

(1) Except as otherwise provided in Section 41-29-176, Mississippi Code of 1972, when any property, other than a controlled substance, raw material or paraphernalia, is seized under the Uniform Controlled Substances Law, proceedings under this section shall be instituted within thirty (30) days from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(2) A petition for forfeiture shall be filed in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the Bureau of Narcotics or the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Mississippi Bureau of Narcotics or the local law enforcement agency has actual knowledge;

(d) Any holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate, by making a good faith inquiry as described in subsection (8) of this section; and

(e) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi, then the Bureau of Narcotics or the local law enforcement agency

shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the bureau or the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the appropriate office designated in Section 75-9-501, Mississippi Code of 1972, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the Mississippi Department of Transportation as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(7) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the Bureau of Narcotics or the local law enforcement agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) If the property is real estate, the Bureau of Narcotics or the local law enforcement agency shall make inquiry of the chancery clerk of the county wherein the property is located to determine who is the owner of record and who, if anyone, is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(9) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the Bureau of Narcotics or the local law enforcement agency shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property

is unknown, the Bureau of Narcotics or the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of _____," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (8) of this section shall be introduced into evidence at the hearing.

SOURCES: Laws, 1979, ch. 473, § 1; Laws, 1982, ch. 323, § 5; Laws, 1985, ch. 388, § 3; Laws, 1986, ch. 361, § 3; Laws, 1988, ch. 474, § 3; Laws, 1992, ch. 496, § 26; Laws, 1996, ch. 511, § 3; Laws, 2001, ch. 495, § 24, eff from and after Jan. 1, 2002.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Disposition of seized controlled substances, see § 41-29-154.

Mississippi Motor Vehicle and Manufactured Housing Title Law, see §§ 63-21-1 et seq.

Federal Aspects — Federal Aviation Programs, generally, see 49 USCS § 40101 et seq.

Federal Aviation Administration generally, see 49 USCS § 1341 et seq.

JUDICIAL DECISIONS

1. In general.
2. Innocent owner.
3. Constitutionality.

1. In general.

Pursuant to Miss. Code Ann. § 41-29-177(1), the county's forfeiture complaint against defendant was timely; however, there was no explanation by the county for the delay in the proceedings, and on remand, the county had the opportunity to explain the delay and defendant could explain why he did not request a hearing for three years. One 1970 Mercury Cougar v. Tunica County, 936 So. 2d 988 (Miss. Ct. App. 2006).

City seized cash and a vehicle; subsequently, the city released the vehicle, but not the cash, to the owner. The forfeiture proceedings in the case, because of the

value of the property involved, which was \$ 35,370 in cash, had to be instituted by the city pursuant to Miss. Code Ann. § 41-29-177, which required that forfeiture proceedings be instituted within 30 days, but the city never instituted such proceedings within 30 days; therefore, in accordance with the requirement of Miss. Code Ann. § 41-29-177(1), the seized property had to be returned to the owner. *City of Hattiesburg v. Thirty-Five Thousand Three Hundred Seventy Dollars*, 872 So. 2d 701 (Miss. Ct. App. 2004).

A petition for forfeiture was not filed promptly where it was not filed until three months after the seizure of a vehicle and there was nothing in the record to justify the delay. *Galloway v. City of New Albany*, 735 So. 2d 407 (Miss. 1999).

Two bank accounts were not subject to forfeiture, notwithstanding that the owner of the accounts pled guilty to conspiracy to distribute 500 grams or more of cocaine and the commission of a drug crime with a firearm, where the state's witness could not tie the monies in the bank accounts with any criminal conduct by the owner. One 1979 Ford 15V v. State ex rel. Miss. Bureau of Narcotics, 721 So. 2d 631 (Miss. 1998).

When a forfeiture is adjudicated in conjunction with criminal proceedings, the contraband money should be deposited into the county's general fund pursuant to Art 14 § 261 of the Mississippi Constitution and is subject to the usual accounting and audit procedures of the county and/or State; in those instances where criminal proceedings are never brought, or in cases where the forfeiture proceedings are not adjudicated in conjunction with a criminal trial, the statutory provisions of §§ 41-29-176 through 41-29-181 will prevail. *Bell v. State*, 623 So. 2d 267 (Miss. 1993).

Eighteen month delay between seizure of money and filing of petition for forfeiture of money violates § 41-29-177, and requires dismissal of petition for forfeiture, where no explanation for delay is

offered. *Lewis v. State*, 481 So. 2d 842 (Miss. 1985).

2. Innocent owner.

The owner of a vehicle was an innocent owner where the evidence indicated that he did not know about or consent to a drug transaction and that he thought he was driving his wife, who was involved in the transaction, to pick up child support. *Galloway v. City of New Albany*, 735 So. 2d 407 (Miss. 1999).

3. Constitutionality.

In an action seeking the recovery of damages for the allegedly unconstitutional forfeiture of his truck and to obtain a declaration that the forfeiture statute at issue was unconstitutional, the defendant state was not entitled to summary judgment since, although the statute required institution of forfeiture proceedings "promptly," it set forth no guidelines for when a hearing on the forfeiture must be held and this rendered the statute facially unconstitutional because it allowed the government to deprive a presumably innocent person of his property indefinitely without due process of law. *Galloway v. City of New Albany*, 92 F. Supp. 2d 592 (N.D. Miss. 2000).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 41-29-177(10) provides procedure for forfeiture of property where owner of property cannot be served with copy of petition and/or where there was no person in possession of property at time it was seized. *Magee*, Jan. 8, 1993, A.G. Op. #92-0909.

Miss. Code Section 41-29-177(2) provides that petition for forfeiture of seized property may be filed "in the name of the State of Mississippi, the county or the municipality"; because petition is to be brought in name of county and not in name of law enforcement agency, county, acting through board of supervisors, has authority to decide whether or not it will pay private attorney to maintain forfeiture proceeding on county's behalf. *Brumley*, Jan. 8, 1993, A.G. Op. #92-0991.

Procedure for making forfeiture expenditures out of sheriff's budget is provided

for in Miss. Code Section 41-29-177(2). *Brumley*, Jan. 8, 1993, A.G. Op. #92-0991.

Based on Section 41-29-177, service of process providing notice should be served in the same manner as in civil cases. All diligent efforts should be made to provide actual notice when at all possible. Notice by publication should be used only in the event that the owner of the property to be seized is unknown and diligent efforts to ascertain the identity or whereabouts of such owner fail. *Alldredge*, May 3, 1996, A.G. Op. #96-0269.

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California, there had been no contact with her since 1996, she was believed to have died, and it was unknown whether the deceased had any other rela-

tives. Strahan, Nov. 10, 2000, A.G. Op. #2000-0638.

The manner in which deadly weapons should be disposed of depends on the manner in which they were seized; specifically, Section 41-29-177 provides for the manner in which a weapon that has been seized and forfeited under the Uniform Controlled Substances Law should be dis-

posed of; for all other deadly weapons that are seized, Section 45-9-151 should be followed; Section 21-39-21 is a general statute with regard to lost, stolen, abandoned, or misplaced property, but Section 45-9-151 is specific to deadly weapons and therefore the more specific statute should be followed. Malta, May 26, 2000, A.G. Op. #2000-0221.

RESEARCH REFERENCES

ALR. Forfeiture of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 A.L.R.4th 637.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Validity and construction of state statutes criminalizing the act of permitting real property to be used in connection with illegal drug activities. 24 A.L.R.5th 428.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7) [redesignated as 21 USCS § 889]). 104 A.L.R. Fed. 288.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-179. Procedure for disposition of seized property; answer; hearing; burden of proving property subject to forfeiture; disposition after court's finding; summary forfeiture of controlled substances, raw material and paraphernalia.

(1) Except as otherwise provided in Section 41-29-176, an owner of property, other than a controlled substance, raw material or paraphernalia, that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the Mississippi Bureau of Narcotics or the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the Bureau of Narcotics, the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(2) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that

the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of this article shall be by a preponderance of the evidence.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the Mississippi Bureau of Narcotics or the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the Mississippi Bureau of Narcotics or the local law enforcement agency.

(5) Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any controlled substance or raw material is made, the circuit court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires. Upon a petition filed in the name of the State of Mississippi, the county or the municipality with the clerk of the circuit court of the county in which the seizure of any purported paraphernalia is made, the circuit court having jurisdiction may order such seized property summarily forfeited when the court has determined the seized property to be paraphernalia as defined in Section 41-29-105(v).

SOURCES: Laws, 1979, ch. 473, § 2; Laws, 1982, ch. 323, § 6; Laws, 1985, ch. 388, § 4; Laws, 1986, ch. 361, § 4; Laws, 1988, ch. 474, § 4, eff from and after July 1, 1988.

Cross References — Disposition of seized controlled substances, see § 41-29-154.

JUDICIAL DECISIONS

1. In general.
2. Innocent owner defense.

1. In general.

Owner failed to file a statutorily sufficient petition to recover seized property

and contest forfeiture within 30 days after receipt of the notice of intention to forfeit, because the petition was only signed by the owner's attorney, and the appellate court overruled the owner's assertion that the amended answer after the 30 days

passed cured the deficiency. 1999 Buick Century v. State, 966 So. 2d 841 (Miss. Ct. App. 2007).

Supreme Court of Mississippi adopts the United States Court of Appeals for the Seventh Circuit's sound reasoning and finding that dog alerts to currency are entitled to probative weight in forfeiture proceedings; the currency contamination theory is rejected. *Evans v. City of Aberdeen*, 926 So. 2d 181 (Miss. 2006).

City did not meet its burden of showing that a civil forfeiture of money was warranted; a dog sniff was not entitled to weight due to the fact that a bag used could have been contaminated, no inference of illegal narcotics trafficking arose due to the fact that money was found in connection with a brass container, a brillo pad, and burnt tin foil since there was conflicting evidence regarding the use of those items, and there were no drugs found in a residence. *Evans v. City of Aberdeen*, 926 So. 2d 181 (Miss. 2006).

Where a property owner files a verified answer denying that the property is subject to forfeiture, the burden is on the State to prove to the contrary; the State must demonstrate by a preponderance of the evidence that the owner had knowledge of or consented to the illegal use of his or her property for drug-related activities. *Marsh v. Gruver*, 642 So. 2d 381 (Miss. 1994).

The evidence was insufficient to demonstrate a vehicle owner's knowledge of or consent to her brother's use of her vehicle to transport a controlled substance, and therefore forfeiture of the vehicle after the brother's arrest for possession of cocaine was improper, even though the owner was aware that her brother had previously been arrested on drug possession charges and she frequently allowed him to use her vehicle, where she filed a verified answer denying that her vehicle was subject to forfeiture, and she had warned her brother against using her car for drug activities, since facts merely creating a suspicion that the owner of a vehicle had knowledge of the driver's illegal activity are inadequate to support a forfeiture. *Marsh v. Gruver*, 642 So. 2d 381 (Miss. 1994).

There was insufficient proof of the necessary nexus between \$1,270 in cash

found in a suspect's pocket and crack cocaine found in his car to warrant seizure of the money where the cocaine was in a match box on the passenger side of the console, there was no evidence of furtive gestures or any other suggestion that the suspect had handled the package, the suspect denied that the money was in close proximity to the cocaine, he offered a reason why he was carrying the money on his person, and there was no evidence that the suspect was a drug dealer; in the absence of direct proof of trafficking, where there is uncontradicted proof of an alternate source, the presumption in § 41-29-153(a)(7) that drugs and money found in close proximity are forfeitable has been rebutted and disappears. *Neely v. State ex rel. Tate County*, 628 So. 2d 1376 (Miss. 1993).

The evidence was sufficient to support a finding that \$16,700 cash found in the defendant's automobile had been used or was intended for use in violation of the Uniform Controlled Substances Law (§§ 41-29-101 et seq.), and was therefore subject to forfeiture, where the cash was in mostly 20 dollar and 50 dollar denominations, it was found in a "Crown Royal" velvet bag, plastic "Ziploc" bags, 2 spare tires, and 2 rolls of gray duct tape were also found in the defendant's automobile, and an employee of the Mississippi Bureau of Narcotics testified that it was common to see 20 dollar and 50 dollar denominations used in drug trafficking and that the other items found in the defendant's automobile were also commonly used in narcotics trafficking. *Hickman v. State ex rel. Mississippi Dep't of Pub. Safety*, 592 So. 2d 44 (Miss. 1991).

The burden of proof on the State, under § 41-29-179, is a preponderance of the evidence. *Reed v. State ex rel. Miss. Bureau of Narcotics*, 460 So. 2d 115 (Miss. 1984).

If the owner of an automobile used to facilitate the illegal transportation, sale, receipt, possession, or concealment of certain controlled substances files a verified answer in response to a petition for forfeiture pursuant to § 41-29-153, denying that his automobile is subject to forfeiture, § 41-29-179 places upon the state the burden of proving the propriety of the

forfeiture by a preponderance of the evidence; moreover, facts merely creating a suspicion that the owner had knowledge of the driver's illegal activity are inadequate to support a forfeiture and, accordingly, the facts that the vehicle owner's husband occasionally used her automobile, that he had access to her keys, and that she knew of his eight-year-old drug-related conviction were insufficient to warrant forfeiture of her car. *Ervin v. State ex rel. Mississippi Bureau of Narcotics*, 434 So. 2d 1324 (Miss. 1983).

2. Innocent owner defense.

Preponderance of the evidence did not support a finding that appellant claimant

knew of or consented to her son's use of her vehicle for drug-related activities; after the claimant and her husband suspected that the son was stealing the husband's medications, they took numerous measures to stop him from doing so (including having the medicine held at the post office and carrying the medicine with them in a bag), and the son did not have a driver's license and was not allowed to drive the vehicle. *1994 Mercury Cougar v. Tishomingo County*, 970 So. 2d 744 (Miss. Ct. App. 2007).

ATTORNEY GENERAL OPINIONS

A city could institute a forfeiture action with regard to cash found on the person of a dead suspected local drug dealer where the deceased's mother was believed to have resided in California; there had been no contact with her since 1996 and she was believed to have died, and it was unknown whether the deceased had any

other relatives. *Strahan*, Nov. 10, 2000, A.G. Op. #2000-0638.

An answer or pleading filed under Section 41-29-179 should be signed by the attorney filing the pleading or, if no attorney, by the individual filing the pleading. In either case the pleading need not be verified. *Davis*, May 26, 2006, A.G. Op. 06-0199.

RESEARCH REFERENCES

ALR. Forfeitability of property held in marital estate under Uniform Controlled Substances Act or similar statute. 84 A.L.R.4th 620.

Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer. 84 A.L.R.4th 637.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.

(1) Regarding all controlled substances, raw materials and paraphernalia which have been forfeited, the circuit court shall by its order direct the Bureau of Narcotics to:

- (a) Retain the property for its official purposes;
 - (b) Deliver the property to a government agency or department for official purposes;
 - (c) Deliver the property to a person authorized by the court to receive it;
- or

(d) Destroy the property that is not otherwise disposed, pursuant to the provisions of Section 41-29-154.

(2) All other property, real or personal, which is forfeited under this article, except as otherwise provided in Section 41-29-185, and except as provided in subsections (3), (7) and (8) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, twenty percent (20%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

If the criminal case is initiated by an officer of the Bureau of Narcotics and more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, the proceeds shall be divided equitably between or among the Bureau of Narcotics and other participating law enforcement agencies and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the Bureau of Narcotics and the other participating law enforcement agencies cannot agree on an equitable division of the proceeds, a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(3) All money which is forfeited under this article, except as otherwise provided by Section 41-29-185, shall be divided, deposited and credited in the same manner as set forth in subsection (2) of this section.

(4) All property forfeited, deposited and credited to the Mississippi Bureau of Narcotics under this article shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Bureau of Narcotics upon appropriation by the Legislature.

(5) All real estate which is forfeited under the provisions of this article shall be sold to the highest and best bidder at a public auction for cash, such auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the

case of sales of land under execution at law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on such property. The remaining proceeds shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(6) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(7)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property, other than real property, money or such property that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(8) The Mississippi Bureau of Narcotics may maintain, repair, use and operate for official purposes all property, other than real property, money or such property as is described in subsection (1) of this section, that has been forfeited to the bureau if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the bureau may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that such property can be released for use by the bureau.

The bureau may maintain, repair, use and operate such property with money appropriated to the bureau for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the bureau is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (9) of this section.

(9) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SOURCES: Laws, 1979, ch. 473, § 3; Laws, 1982, ch. 323, § 7; Laws, 1983, ch. 508; Laws, 1985, ch. 388, § 5; Laws, 1986, ch. 361, § 2; Laws, 1996, ch. 511, § 4; Laws, 2001, ch. 329, § 1; Laws, 2004, ch. 498, § 1; Laws, 2005, ch. 463, § 3, eff from and after July 1, 2005.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Bureau of narcotics, generally, see §§ 41-29-107 through 41-29-112.

Disposition of seized controlled substances, see § 41-29-154.

Forfeiture of property other than controlled substances, raw material and paraphernalia that is seized under the Uniform Controlled Substances Law, see § 41-29-176.

Mississippi Motor Vehicle and Manufactured Housing Title Law, see §§ 63-21-1 et seq.

Bidding for forfeited beverages and property under alcoholic beverages control law, see § 67-1-17.

JUDICIAL DECISIONS

1. In general.

Business argued that the trial court erred in finding a customary practice existed between it and the county, and that the business was not entitled to storage fees for the vehicle; the appellate court failed to see how the dealings between the business and the county amounted to a customary practice whereby the county was entitled to free storage in return for using the services of the business; accordingly, the trial court's determination was in error, and although the trial judge intended the business to benefit from whatever proceeds were received after the forfeiture proceedings, it was unclear what exactly the trial court intended the business to receive. *James Wrecker Serv. v. Humphreys County*, 906 So. 2d 771 (Miss. Ct. App. 2004).

When a forfeiture is adjudicated in conjunction with criminal proceedings, the contraband money should be deposited into the county's general fund pursuant to Art 14 § 261 of the Mississippi Constitution and is subject to the usual accounting

and audit procedures of the county and/or State; in those instances where criminal proceedings are never brought, or in cases where the forfeiture proceedings are not

adjudicated in conjunction with a criminal trial, the statutory provisions of §§ 41-29-176 through 41-29-181 will prevail. *Bell v. State*, 623 So. 2d 267 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

Office of district attorney may participate in drug forfeiture proceeds. *Mellen*, Sept. 10, 1992, A.G. Op. #92-0254.

Municipality could use state forfeiture funds to purchase police cars for law enforcement purposes but when forfeiture funds are received, municipality must amend its budget. *Bobo*, March 15, 1994, A.G. Op. #94-0105.

The office of the district attorney may participate in drug forfeiture proceeds under Section 41-29-181. *Evans*, May 10, 1996, A.G. Op. #96-0280.

A law enforcement agency should contact the Director of the Bureau of Narcotics for the use of forfeited controlled substances for training or demonstration purposes under §§ 41-29-154 and 41-29-181. *Genin*, April 16, 1999, A.G. Op. #99-0169.

In the context of forfeitures under the statute, the "initiating agency" is the entity filing the petition for forfeiture; the parties to an interlocal agreement may provide in that agreement which entity will be responsible for such filings, but this duty may not be assigned to a drug task force directly. *Stewart*, Jan. 21, 2000, A.G. Op. #99-0728.

Monies seized by an initiating agency cannot be equally divided to all participat-

ing agencies in the interlocal agreement. *Stewart*, Jan. 21, 2000, A.G. Op. #99-0728.

There is no authority that would permit sale of guns and weapons by sealed bids received solely from licensed gun dealers. *Sweat*, Sept. 27, 2002, A.G. Op. #02-0511.

Contributing forfeited funds to a drug task force is a valid law enforcement purpose, therefore, a district attorney may contribute funds that are received by his office as a result of drug forfeiture to a drug task force. *McDonald*, Dec. 6, 2002, A.G. Op. #02-0699.

Proceeds of drug forfeitures may be used for the construction of a jail as well as a weight and exercise room for the use of the employees of the sheriff's department. *Morrow*, Nov. 19, 2004, A.G. Op. 04-0539.

A municipality may use forfeited funds to purchase real property for use as a police firing range. *Bobo*, No. 11, 2004, A.G. Op. 04-0562.

In the event the agencies in Section 41-29-181(2)(b) cannot agree on an equitable division of proceeds, a petition shall be filed by any one of the agencies in the court in which the civil forfeiture case is brought and the court shall make an equitable division. *Farris*, Apr. 28, 2006, A.G. Op. 06-0142.

RESEARCH REFERENCES

Am Jur. 25 *Am. Jur.* 2d, *Drugs and Controlled Substances* §§ 214 et seq.

CJS. 28 *C.J.S.*, *Drugs and Narcotics* Supp §§ 233, 235 et seq.

Law Reviews. *Payne*, An introduction to civil forfeiture in Mississippi: An effec-

tive law enforcement tool or cash register justice? 59 *Miss. L. J.* 453, Fall 1989.

Practice References. *Smith*, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-183. Procedure for disposition of seized property; exclusiveness of remedy.

The forfeiture procedure set forth in Sections 41-29-177 through 41-29-181 is the sole remedy of any claimant, and no court shall have jurisdiction to

interfere therewith by replevin, injunction, supersedeas or in any other manner.

SOURCES: Laws, 1979, ch. 473, § 4, eff from and after July 1, 1979.

Cross References — Disposition of seized controlled substances, see § 41-29-154.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 214 et seq.

CJS. 28 C.J.S., Drugs and Narcotics Supp §§ 233, 235 et seq.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective

law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.

One hundred percent (100%) of any seized and forfeited property to be transferred to any state or local law enforcement agency under the provisions of 21 U.S.C.S. 881(e)(1), 19 U.S.C.S. 1616(a)(2), or other federal property sharing provisions, shall be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such transferred property must be used to augment existing state and local law enforcement budgets and not to supplant them.

SOURCES: Laws, 1986, ch. 361, § 1, eff from and after passage (approved March 20, 1986).

Editor's Note — 21 USCS 881(e)(1) referred to in this section was repealed by Act April 25, 2000, P.L. 106-185 § 2(c)(3) Stat. 210. The section had earlier been redesignated § 888 and was headnoted "Expedited procedures for seized conveyances." 19 USCS 1616(a)(2) was repealed by Act Oct. 27, 1986, P.L. 99-570, Title 1, Subtitle Q, § 1836(b), 100 Stat. 3207-54. It provided for the disposition of forfeited property.

Cross References — Disposition of certain forfeited property other than as provided by this section, see § 41-29-181.

ATTORNEY GENERAL OPINIONS

Employment of counsel to represent the city police department in criminal forfeiture and other law enforcement matters is an appropriate expenditure of drug forfeiture funds. Scott, Mar. 18, 1992, A.G. Op. #91-0171.

Section 41-29-185, concerning disposition of seized and forfeited property pursuant

to federal statutes, also applies to disposition of seized and forfeited property under state drug forfeiture statutes; funds properly forfeited pursuant to court order may be used for any law enforcement purpose, including salaries of law enforcement personnel. Mercer Dec. 9, 1993, A.G. Op. #93-0864.

RESEARCH REFERENCES

ALR. Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 A.L.R.4th 496.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities. 38 A.L.R.4th 515.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Jurisdiction of United States District Court under 28 USCS § 1346(a) in civil action to order return of fines, forfeitures, and costs imposed after criminal conviction subsequently held to have been unconstitutional. 41 A.L.R. Fed. 350.

Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d). 57 A.L.R. Fed. 234.

Forfeiture of personal property used in illegal manufacture, processing, or sale of

controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act 1970 (21 USCS § 881 [repealed]). 59 A.L.R. Fed. 765.

Delay between seizure of personal property by Federal Government and institution of proceedings for forfeiture thereof as violative of Fifth Amendment due process requirements. 69 A.L.R. Fed. 373.

Seizure and forfeiture, under 19 USCS § 1526(e), of imported merchandise bearing counterfeit trademark. 72 A.L.R. Fed. 858.

Seizure or forfeiture of real property used in illegal possession, manufacture, processing, purchase, or sale of controlled substances under § 511(a)(7) of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881(a)(7) [repealed]). 104 A.L.R. Fed. 288.

Law Reviews. Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

Practice References. Smith, Prosecution and Defense of Forfeiture Cases (Matthew Bender).

§ 41-29-187. Production of business records and documents; investigations of felony violations; copy costs; return of documents; liability for compliance; sealed applications; offense for disclosures; penalties.

(1) Attorneys for the Mississippi Bureau of Narcotics, by and through the Director of the Mississippi Bureau of Narcotics, are authorized to seek judicial subpoenas to require any person, firm or corporation in the State of Mississippi to produce for inspection and copying business records and other documents which are relevant to the investigation of any felony violation of the Uniform Controlled Substances Law of the State of Mississippi. The production of the designated documents shall be at the location of the named person's, firm's or corporation's principal place of business, residence or other place at which the person, firm or corporation agrees to produce the documents. The cost of reproducing the documents shall be borne by the bureau at prevailing rates. At the conclusion of the investigation and any related judicial proceedings, the person, firm or corporation from whom the records or documents were subpoenaed shall, upon written request, be entitled to the return or destruction of all copies remaining in the possession of the bureau.

(2) The bureau is authorized to make an ex parte and in camera application to the county or circuit court of the county in which such person, firm or corporation resides or has his principal place of business, or if the person, firm or corporation is absent or a nonresident of the State of Mississippi, to the county or circuit court of Hinds County. On application of the county or circuit court, a subpoena duces tecum shall be issued only upon a showing of probable cause that the documents sought are relevant to the investigation of a felony violation of the Uniform Controlled Substances Law or may reasonably lead to the discovery of such relevant evidence. Nothing contained in this section shall affect the right of a person to assert a claim that the information sought is privileged by law. Such application to the court shall be in writing and accompanied by a sworn affidavit from an agent of the Bureau of Narcotics which sets forth facts which the court shall consider in determining that probable cause exists.

(3) Any person, firm or corporation complying in good faith with a judicial subpoena issued pursuant to this section shall not be liable to any other person, firm or corporation for damages caused in whole or in part by such compliance.

(4) Documents in the possession of the Mississippi Bureau of Narcotics gathered pursuant to the provisions of this section and subpoenas issued by the court shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need to know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for forfeiture or recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

(5) The circuit or county judge shall seal each application and affidavit filed and each subpoena issued after service of said subpoena. The application, affidavit and subpoena may not be disclosed except in the course of a judicial proceeding. Any unauthorized disclosure of a sealed subpoena, application or affidavit shall be punishable as contempt of court.

(6) No person, including the Director of the Mississippi Bureau of Narcotics, an agent or member of his staff, prosecuting attorney, law enforcement officer, witness, court reporter, attorney or other person, shall disclose to an unauthorized person documents gathered by the bureau pursuant to the provisions of this section, nor investigative demands and subpoenas issued and served, except that upon the filing of an indictment or information, or upon the filing of an action for forfeiture or recovery of property, funds or fines, or in other legal proceedings, the documents shall be subject to such disclosure as may be required pursuant to applicable statutes and court rules governing the trial of any such judicial proceeding. In the event of an unauthorized disclosure of any such documents gathered by the Mississippi Bureau of Narcotics pursuant to the provisions of this section, the person making any such unauthorized disclosure shall be guilty of a misdemeanor, and upon conviction

thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or imprisonment of not more than six (6) months, or by both such fine and imprisonment.

(7) No person, agent or employee upon whom a subpoena is served pursuant to this section shall disclose the existence of said subpoena or the existence of the investigation to any person unless such disclosure is necessary for compliance with the subpoena. Any person who willfully violates this subsection shall be guilty of a misdemeanor and may be confined in the county jail, for a period not to exceed one (1) year, or fined not more than Ten Thousand Dollars (\$10,000.00), or both.

SOURCES: Laws, 1998, ch. 493, § 1, eff from and after July 1, 1998.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

OTHER NARCOTIC DRUG REGULATIONS.

| SEC. | |
|------------|---|
| 41-29-301. | License required. |
| 41-29-303. | Requirements for license. |
| 41-29-305. | Who may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs. |
| 41-29-307. | Transportation and storage of narcotic drugs. |
| 41-29-309. | Nuisances. |
| 41-29-311. | Suspension or revocation of license or registration. |
| 41-29-313. | Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations. |
| 41-29-315. | Restrictions on purchase and sale of certain methamphetamine precursors; penalties. |
| 41-29-317. | Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem. |

§ 41-29-301. License required.

No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the state board of pharmacy. However, the provisions of this section shall not apply to the dispensing, administration, giving away, mixing or otherwise preparing any of such drugs by a registered physician, dentist or veterinarian in the

course of his professional practice, where said drugs are dispensed, administered, given away, mixed or otherwise prepared for legitimate medical purposes.

SOURCES: Codes, 1942, § 6847; Laws, 1936, ch. 289.

Cross References — Drug Courts, see §§ 9-23-1 et seq.

Registration of manufacturers and distributors of controlled dangerous substances, see § 41-29-127.

Forfeitures for violations of this article, see § 41-29-153.

Exemptions from license requirements, see § 41-29-307.

Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 19 et seq., 81 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 21 (complaint, petition or declaration — to restrain interference with production and distribution of medicine).

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 4-8 (proceedings for relief from licensing regulation).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq.

(petition or application — for judicial review of licensing authority's grant of a license to another — by existing license holder).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 26, 32 (for mandamus — to compel issuance of license, order — directing jury trial — on petition for review of administrative denial of license).

CJS. 28 C.J.S., Drugs and Narcotics § 65-68.

§ 41-29-303. Requirements for license.

No license shall be issued under Section 41-29-301 unless and until the applicant therefor has furnished proof satisfactory to the state board of pharmacy that the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character, and that the applicant is properly equipped as to land, buildings, and paraphernalia to carry on the business described in his application. No license shall be granted to any person who has within five (5) years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict. The state board of pharmacy may suspend or revoke any license for cause.

SOURCES: Codes, 1942, § 6848; Laws, 1936, ch. 289.

§ 41-29-305. Who may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs.

A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, dispense, mix or otherwise prepare

narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

A veterinarian, in good faith and in the course of his professional practice only, and not for use by human beings, may prescribe, administer, dispense, mix or otherwise prepare narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

SOURCES: Codes, 1942, § 6851; Laws, 1936, ch. 289.

Cross References — Prescriptions under uniform controlled dangerous substances law, see § 41-29-137.

Dentists, see §§ 73-9-1 et seq.

Practice of medicine, see § 73-25-33.

Veterinarians, see §§ 73-39-1 et seq.

Dispensation of drugs to state executioner, see § 99-19-53.

RESEARCH REFERENCES

ALR. Right of medical patient to obtain, or physician to prescribe, Laetrile for treatment of illness — state cases. 5 A.L.R.4th 219.

Medical malpractice: drug manufacturer's package insert recommendations as evidence of standard of care. 82 A.L.R.4th 166.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances § 16.

34 Am. Jur. Proof of Facts 2d 199, Drug-gist's Liability for Improperly Filling Prescription.

38 Am. Jur. Proof of Facts 2d 589, Physician's Liability for Causing Patient's Drug Addiction.

CJS. 28 C.J.S., Drugs and Narcotics Supp § 197.

72 C.J.S., Poisons §§ 8 et seq.

§ 41-29-307. Transportation and storage of narcotic drugs.

The provisions of Sections 41-29-301 through 41-29-311 restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawful transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

SOURCES: Codes, 1942, § 6856; Laws, 1936, ch. 289.

RESEARCH REFERENCES

ALR. Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 A.L.R.3d 1319.

What constitutes unlawful conduct subject to federal statutes prohibiting drug-

related activities aboard United States vessels (21 USCS §§ 955 et seq). 73 A.L.R. Fed. 586.

CJS. 72 C.J.S., Poisons §§ 2-4.

§ 41-29-309. Nuisances.

Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a public nuisance. No person shall keep or maintain such public nuisance.

SOURCES: Codes, 1942, § 6857; Laws, 1936, ch. 289.

Cross References — Nuisances, generally, see §§ 95-3-1 et seq.

§ 41-29-311. Suspension or revocation of license or registration.

On the conviction of any physician, dentist, veterinarian, manufacturer, wholesaler, or apothecary of a violation of any of the provisions of Sections 41-29-301 through 41-29-309, in any court of competent jurisdiction, the clerk of said court shall send a certified copy of the indictment, affidavit, information, and of the rules, verdict and sentence to the board or officer, by whom the convicted defendant has been licensed to practice his or her profession or to carry on his or her business. Such board or officer may in its or his discretion suspend or revoke the license or registration of the convicted defendant to practice his or her profession or to carry on his or her business. On the application of any such convicted defendant whose license or registration has been suspended or revoked, upon proper showing and for good cause, said board or officer may reinstate such license or registration.

Any court of competent jurisdiction in which such a defendant is convicted of a violation of any of the provisions of Sections 41-29-301 through 41-29-309 shall have the power in its discretion to suspend or revoke the license or registration of the convicted defendant and may thereafter, upon proper showing and for good cause reinstate such license or registration.

No board or officer shall reinstate any such license or registration where the same shall have been suspended or revoked by a court of competent jurisdiction; no court shall reinstate any license of such a convicted defendant which has been revoked by the board or officer by whom the convicted defendant was licensed to practice his or her profession or to carry on his or her business except upon a proceeding brought in a court of competent jurisdiction for the purpose of setting aside or restraining such suspension or revocation of license.

This section shall not apply wherever any board is already, under existing statutes, vested with authority to suspend or revoke license because of violation of any federal law regulating the use or disposition of narcotics.

SOURCES: Codes, 1942, § 6859; Laws, 1936, ch. 289.

Cross References — Revocation or suspension of registration under uniform controlled dangerous substances law, see § 41-29-129.

Penalties for violations of uniform controlled dangerous substances law, see §§ 41-29-139 through 41-29-151.

Revocation or suspension of dentist's license, generally, see § 73-9-61.

Suspension or revocation of physician's license, generally, see §§ 73-25-27, 73-25-29, 73-25-31.

RESEARCH REFERENCES

ALR. Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 A.L.R.3d 1408.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice. 22 A.L.R.4th 668.

Medical malpractice: drug manufacturer's package insert recommendations as evidence of standard of care. 82 A.L.R.4th 166.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 90 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint,

petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 47 (citation-by licensing authority — commanding licensee to appear at proceedings for revocation or suspension of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43-46, 48 (revocation or suspension of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (reinstatement of license).

§ 41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

(1)(a) Except as authorized in this section and in Section 41-29-315, it is unlawful for any person to knowingly or intentionally:

(i) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance;

(ii) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance;

(b) The term "precursor drug or chemical" means a drug or chemical that, in addition to legitimate uses, may be used in manufacturing a controlled substance in violation of this chapter. The term includes any salt, optical isomer or salt of an optical isomer, whenever the existence of a salt, optical isomer or salt of optical isomer is possible within the specific chemical designation. The chemicals or drugs listed in this section are included by whatever official, common, usual, chemical or trade name designated. A "precursor drug or chemical" includes, but is not limited to, the following:

- (i) Ether;
- (ii) Anhydrous ammonia;
- (iii) Ammonium nitrate;
- (iv) Pseudoephedrine;
- (v) Ephedrine;
- (vi) Denatured alcohol (Ethanol);
- (vii) Lithium;
- (viii) Freon;
- (ix) Hydrochloric acid;
- (x) Hydriodic acid;
- (xi) Red phosphorous;
- (xii) Iodine;
- (xiii) Sodium metal;
- (xiv) Sodium hydroxide;
- (xv) Muriatic acid;
- (xvi) Sulfuric acid;
- (xvii) Hydrogen chloride gas;
- (xviii) Potassium;
- (xix) Methanol;
- (xx) Isopropyl alcohol;
- (xxi) Hydrogen peroxide;
- (xxii) Hexanes;
- (xxiii) Heptanes;
- (xxiv) Acetone;
- (xxv) Toluene;
- (xxvi) Xylenes.

(c) Any person who violates this subsection (1), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed thirty (30) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor

more than One Million Dollars (\$1,000,000.00), or both fine and imprisonment.

(2)(a) It is unlawful for any person to knowingly or intentionally steal or unlawfully take or carry away any amount of anhydrous ammonia or to break, cut, or in any manner damage the valve or locking mechanism on an anhydrous ammonia tank with the intent to steal or unlawfully take or carry away anhydrous ammonia.

(b)(i) It is unlawful for any person to purchase, possess, transfer or distribute any amount of anhydrous ammonia, knowing, or under circumstances where one reasonably should know, that the anhydrous ammonia will be used to unlawfully manufacture a controlled substance.

(ii) The possession of any amount of anhydrous ammonia in a container unauthorized for containment of anhydrous ammonia pursuant to Section 75-57-9 shall be prima facie evidence of intent to use the anhydrous ammonia to unlawfully manufacture a controlled substance.

(c)(i) It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.

(ii) Except as provided in this subparagraph, possession of one or more products containing more than twenty-four (24) grams of ephedrine or pseudoephedrine shall constitute a rebuttable presumption of intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subparagraph shall not apply to the following persons who are lawfully possessing the identified drug products in the course of legitimate business:

1. A retail distributor of the drug products described in this subparagraph possessing a valid business license or wholesaler;

2. A wholesale drug distributor, or its agents, licensed by the Mississippi State Board of Pharmacy;

3. A manufacturer of drug products described in this subparagraph, or its agents, licensed by the Mississippi State Board of Pharmacy;

4. A pharmacist licensed by the Mississippi State Board of Pharmacy; or

5. A licensed health-care professional possessing the drug products described in this subparagraph (ii) in the course of carrying out his profession.

(d) Any person who violates this subsection (2), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed five (5) years and shall be fined not more than Five Thousand Dollars (\$5,000.00), or both fine and imprisonment.

(3) Nothing in this section shall preclude any farmer from storing or using any of the listed precursor drugs or chemicals listed in this section in the normal pursuit of farming operations.

(4) Nothing in this section shall preclude any wholesaler, retailer or pharmacist from possessing or selling the listed precursor drugs or chemicals in the normal pursuit of business.

(5) Any person who violates the provisions of this section with children under the age of eighteen (18) years present may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(6) Any person who violates the provisions of this section when the offense occurs in any hotel or apartment building or complex may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection (6), the following terms shall have the meanings ascribed to them:

(a) "Hotel" means a hotel, inn, motel, tourist court, apartment house, rooming house or any other place where sleeping accommodations are furnished or offered for pay if four (4) or more rooms are available for transient guests.

(b) "Apartment building" means any building having four (4) or more dwelling units, including, without limitation, a condominium building.

(7) Any person who violates the provisions of this section who has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(8) Any person who violates the provisions of this section upon any premises upon which any booby trap has been installed or rigged may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection, the term "booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. The term includes guns, ammunition or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices designed for the production of toxic fumes or gases.

SOURCES: Laws, 1999, ch. 555, § 1; Laws, 2000, ch. 561, § 1; Laws, 2002, ch. 479, § 1; Laws, 2005, ch. 309, § 3; Laws, 2005, ch. 463, § 4, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two references in (4) and (5). The words "this act" were changed to "this section." The Joint Committee ratified the corrections at its April 26, 2001, meeting.

Section 3 of ch. 309 Laws of 2005, effective from and after July 1, 2005 (approved March 3, 2005), amended this section. Section 4 of ch. 463, Laws of 2005, effective July 1, 2005 (approved March 29, 2005), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 468, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Indictments.
2. Amendment of indictment.
3. Construction.
4. Double jeopardy considerations.
5. Evidence.
6. Search and seizure.
7. Unit of measurement.
8. Jury instructions.
9. Sentence.

1. Indictments.

Count I of the indictment charged defendant with conspiring to possess precursor chemicals which were not named or otherwise identified, but it did not charge him with conspiring to possess those unidentified precursors with either the intent to manufacture a controlled substance or with knowledge, or under circumstances where he reasonably should have known, that the precursor chemicals would be used to unlawfully manufacture a controlled substance, and thus the wording used in Count I failed to place defendant on notice as to whether he was being charged with conspiring to commit the crime specified in either Tenn. Code Ann. § 41-29-313(1)(a)(i), (1)(a)(ii), or (2)(c)(i); therefore, Count I of the indictment was defective because it failed to allege a crime, and the appellate court had to reverse and render defendant's conviction in *Berry v. State*, 996 So. 2d 793 (Miss. Ct. App. 2007).

The indictment was not fatally defective for failing to state the word "methamphetamine" in the body of the indictment because the indictment and the jury instructions properly tracked the language of Miss. Code Ann. § 41-29-313(1)(a)(i). The jury instructions given did not amend the indictment, which properly informed defendant of the charges against him and conformed to precedent in Mississippi that stated the indictment should track the statute in order to be valid. *Reid v. State*, 910 So. 2d 615 (Miss. Ct. App. 2005).

Pivotal issue on which defendants' argument was hinged, was whether the re-

moval of iodine from the indictment constituted a change that was substantive in nature or merely a change in form. Despite failing to prove that defendants were found in possession of iodine, the State clearly proved that they possessed two or more precursor elements, specifically ephedrine, denatured alcohol, and ethyl ether, and therefore, the presence of iodine in the indictment was inconsequential, and contrary to their arguments, the amended indictment did nothing to alter any defense raised by defendants. *Pittman v. State*, 904 So. 2d 1185 (Miss. Ct. App. 2004).

Miss. Code Ann. § 41-29-313 made possession of precursor chemicals unlawful, and Miss. Code Ann. § 97-1-7 (the attempt statute), and Miss. Code Ann. § 41-29-313, when viewed together, gave the elements of the crime of attempted possession of precursor drugs or chemicals. Thus, where defendant was charged with attempted possession of precursor chemicals, his argument that the trial court had erred in allowing him to plead guilty to a nonexistent statute of attempted possession of precursor chemicals was rejected. *Green v. State*, 880 So. 2d 377 (Miss. Ct. App. 2004).

Petitioner was indicted on two methamphetamine precursor counts, and though both counts may have concerned the same ephedrine, one count was retired, and petitioner was not prosecuted, tried nor convicted on both counts; accordingly, petitioner's rights against double jeopardy were not violated. *McDonald v. State*, 847 So. 2d 281 (Miss. Ct. App. 2003).

2. Amendment of indictment.

Court doubted the authority of the trial court to alter the nature of the charges against defendant under Miss. Code Ann. § 41-29-313(1)(a)(ii), (3) by omitting the charge of possession of pseudoephedrine from the instructions defining the elements of the count under § 41-29-313(1)(a)(ii), and it appeared that such a modification could only be undertaken by

action of the grand jury; thus, the court considered defendant's claims on appeal on the basis of the provisions in the indictment in its "unamended" form. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

3. Construction.

From a plain reading of the statute, it is clear that, in Miss. Code Ann. § 41-29-313, the legislature criminalized the possession, purchase, transfer or distribution of 250 dosage units or 15 grams of weight of pseudoephedrine, and the State has prosecutorial discretion to choose between dosage unit or weight when the drug appears in dosage unit form. Miss. Code Ann. § 41-29-139 does not alter the plain meaning, but provides guidance as to how to proceed when the drug is not in dosage unit form. *Finn v. State*, 978 So. 2d 1270 (Miss. 2008).

Although appellant argued that Miss. Code Ann. § 41-29-313(2)(c)(i) did not criminalize possession of greater than 15 grams of pseudoephedrine if it was in dosage form, appellant's interpretation ignored the statute's plain meaning. *Finn v. State*, 978 So. 2d 1270 (Miss. 2008).

Court rejected defendant's claim that Miss. Code Ann. § 41-29-313 attempted to criminalize conduct that was not criminal; the statute provides some safeguards from overzealous prosecutions by limiting the offense to situations where two or more of the suspect items are possessed at the same time or, with regard to over-the-counter cold medicine, where the quantity would appear to be excessive for any legitimate anticipated use of such a product. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

While it may be true that the language of Miss. Code Ann. § 41-29-313(1)(a)(i) regarding "any amount" of the prohibited substances was primarily intended to cover situations where lesser quantities of the suspect materials were discovered and, therefore, the showing of multiple items was required to strengthen the inference of wrongful intent, it is nevertheless true that "any amount" plainly means just that — any amount; therefore, the possession of 250 — or 250,000, for that matter — dosage units of pseudoephedrine simultaneously with the possession

of any one of the other prohibited substances listed in the statute constitutes a consummated violation of § 41-29-313(1)(a)(i), and, if a defendant is charged, convicted, and sentenced for that violation, it would plainly constitute a double jeopardy violation to attempt to punish defendant a second time for the possession of the exact same supply of pills, simply on the basis that the quantity happened to exceed the permissible level under a separate criminal statute. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

4. Double jeopardy considerations.

Because the offenses of possession under Miss. Code Ann. § 41-29-313 and conspiracy were considered separate criminal violations separately punishable, no double jeopardy principle was violated. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

Quantity of pseudoephedrine described in count one, a violation of Miss. Code Ann. § 41-29-313(1)(a)(ii), was the same quantity of the drug that was identified in count two, a violation of § 41-29-313(3); this exposed defendant to multiple punishments for the same conduct, and under double jeopardy considerations, the court reversed defendant's conviction under count two. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

Because the offenses of possession under Miss. Code Ann. § 41-29-313 and conspiracy were considered separate criminal violations separately punishable, no double jeopardy principle was violated. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

5. Evidence.

Defendant's conviction for possession of precursor chemicals in violation of Miss. Code Ann. § 41-29-313(1)(a)(ii) was appropriate because the state presented the precursor chemicals recovered, and the officers testified that defendant was in the shop with the precursors. There was also a very strong chemical smell indicating that methamphetamine was being manufactured. *Anderson v. State*, 973 So. 2d 1044 (Miss. Ct. App. 2008).

Where an officer testified that he found 288 pseudoephedrine pills in a car, defendant admitted that he was planning to cook methamphetamine, he instructed a passenger in a car to go into a store and get "some," and he admitted that a trip was made to purchase pseudoephedrine, convictions under Miss. Code Ann. §§ 41-29-139, 41-29-313(2)(c) were adequately supported by the evidence. *Vardaman v. State*, 966 So. 2d 885 (Miss. Ct. App. 2007).

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to make a hearsay objection under Miss. R. Evid. 801(c) to a narcotics officer's testimony that he had received complaints concerning defendant's possible manufacture of methamphetamine, or in failing to object to the agent's description of the predominant method of manufacturing methamphetamine in the area. *Myhand v. State*, 981 So. 2d 988 (Miss. Ct. App. 2007).

Evidence was sufficient to sustain a conviction under Miss. Code Ann. § 41-29-313 because an officer testified that the odor he encountered was indicative of a methamphetamine lab, he saw defendant exit the smoked filled room carrying a plastic container and glass jar connected by a tube, and substances contained within the items were later identified as ether, ephedrine, pseudoephedrine, and hexanes; additionally, the coffee filters found in the same room contained methamphetamine and ephedrine pseudoephedrine. *Cook v. State*, 953 So. 2d 271 (Miss. Ct. App. 2007).

Trial court did not err in denying defendant's motion to suppress as there was no

indication of tampering, and the evidence was sufficient to establish defendant in constructive possession of drug precursors; due to direct evidence of the officers' testimony that precursors were found in defendant's toolbox, a circumstantial evidence instruction was properly denied and the jury's verdict was not against the overwhelming weight of the evidence. *Terry v. State*, 944 So. 2d 911 (Miss. Ct. App. 2006).

Conviction of possession of precursor chemicals with intent to manufacture a controlled substance, methamphetamine, was affirmed because defendant was stopped after he was observed purchasing two precursor chemicals at two different stores within a short span of time, the arresting officer explained that methamphetamine manufacturers often purchased different ingredients at different locations in order to avoid suspicion, and a search of defendant's vehicle uncovered two cans of starter fluid, four boxes of antihistabs, aquarium tubing, an aquarium pump, and two gas cans. *Watts v. State*, 936 So. 2d 377 (Miss. Ct. App. 2006), cert. denied, 936 So. 2d 367 (Miss. 2006).

There was more than sufficient evidence from which jurors could reasonably conclude that defendant was in constructive possession of both the precursor chemicals and the methamphetamine at the lab; additional incriminating facts and circumstances supported defendant's awareness of the presence and character of the chemicals. *Kerns v. State*, 923 So. 2d 196 (Miss. 2005), cert. denied, — U.S. —, 126 S. Ct. 1797, 164 L. Ed. 2d 536 (2006).

Where defendant's fingerprints were found on material seized at a clandestine methamphetamine lab, the fingerprints discovered at the lab linked defendant to the contraband and that evidence was sufficient to uphold his conviction. *Roe-buck v. State*, — So. 2d —, 2005 Miss. App. LEXIS 167 (Miss. Ct. App. Mar. 8, 2005).

In a drug case, there was insufficient evidence to establish constructive possession of precursor chemicals under Miss. Code Ann. § 41-29-313(1)(a)(i) based on mere proximity to a methamphetamine laboratory located under a trailer; testi-

mony of an alleged accomplice was insufficient to establish control over two precursor chemicals, as required. *Kerns v. State*, 923 So. 2d 210 (Miss. Ct. App. 2005).

Verdict convicting defendant of possession of precursor chemicals with the intent to manufacture a controlled substance in violation of Miss. Code Ann. § 41-29-313(1)(a)(i) was not against the weight of the evidence because under § 41-29-313(1)(a)(i), the State was not required to prove that defendant possessed all four of the precursor chemicals but was only required to prove that defendant possessed any two of the precursor chemicals, hydrochloric acid, sulfuric acid, ether, and anhydrous ammonia. The State's expert testified regarding the testing and positive identification of the precursor chemicals found near defendant's rural home and the jury reasonably determined that the credibility of the State's expert was to be accorded substantial weight. *Reid v. State*, 910 So. 2d 615 (Miss. Ct. App. 2005).

In defendants' trial for possession of precursor chemicals with the intent to manufacture methamphetamines, the trial court's admission of numerous tupperware containers did not deprive defendants of any due process rights and, accordingly, did not prejudice their defense in any measure. That the containers were not found to have contained denatured alcohol and ethyl ether at the time of seizure was irrelevant because, as the trial court explained, the containers were not for proving the presence of the chemicals but, instead, "went to the intent issue." *Pittman v. State*, 904 So. 2d 1185 (Miss. Ct. App. 2004).

Use of printed labels on pre-packaged, unopened, over-the-counter medications to prove defendant's possession of pseudoephedrine with knowledge that it would be used to manufacture a controlled substance in violation of Miss. Code Ann. § 41-29-313(2)(c), was proper because the ingredients listed were sufficiently trustworthy for admission into evidence as a hearsay exception within the purview of Miss. R. Evid. 803(17) and thus overcome defendant's hearsay and Sixth Amendment Confrontation Clause objections.

Burchfield v. State, 892 So. 2d 191 (Miss. 2004).

Evidence was sufficient to support defendant's conviction for possession of two or more precursor chemicals (pseudoephedrine and lithium), knowing that the precursor chemicals would be used to unlawfully manufacture a controlled substance (methamphetamine), pursuant to Miss. Code Ann. § 41-29-313(1)(a)(ii), where through the use of receipts, the State showed that defendant had bought several everyday household items that could be used for the manufacture of methamphetamine; he bought a few of these items at each of several different stores. At the time of the investigatory stop and search, he was in possession of boxes of ephedrine and several lithium batteries; the evidence showed he was in possession of precursors to the manufacture of methamphetamine, with the intent that the products would be used to manufacture methamphetamine. *Walker v. State*, 881 So. 2d 820 (Miss. 2004).

There was sufficient evidence to support defendant's convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance; the State proved that the property where the evidence was seized was rented in defendant's name and the account for utilities was also in defendant's name, and thus constructive possession was shown, and there was nothing to support defendant's theory that the items were placed on the property in defendant's absence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

There was sufficient evidence to support defendant's conviction under Miss. Code Ann. § 41-29-313 and for conspiracy given that defendant had purchased an unusually large number of pseudoephedrine packages, defendant attempted to conceal the packages from police, and defendant admitted that defendant was requested to purchase the packages by another individual in return for cash when defendant knew that the individual had been involved in the manufacture of methamphetamine. *Hunt v. State*, 863 So. 2d 990 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

Defendant did not agree to the admission of the packages of medication or waive his right to confront and cross-examine the person who labeled the medication as containing ephedrine, and the State failed to present any evidence that the medications had been chemically analyzed and determined to contain ephedrine, or pseudoephedrine; thus, the State failed to carry its burden of proof as to an essential element of possession of precursor drugs with knowledge that the drugs would be used to manufacture a controlled substance, and defendant's Sixth Amendment right to confrontation was violated and, therefore, the trial court reversed his conviction. *Burchfield v. State*, — So. 2d —, 2003 Miss. App. LEXIS 660 (Miss. Ct. App. July 22, 2003).

6. Search and seizure.

Although defendant's motion to suppress items found in his house should have been granted because the issuing justice had not been presented with a basis of reliability for the informer's statement on which the officers relied, the Miss. Code Ann. § 41-29-313(1)(a)(i) conviction was not reversed because the evidence that ended in defendant's conviction did not come from defendant's house but from the search of other property on which a clandestine methamphetamine lab was found and the search of that property was not dependent on the search warrant issued for defendant's house. *Roebuck v. State*, — So. 2d —, 2005 Miss. App. LEXIS 167 (Miss. Ct. App. Mar. 8, 2005).

Where defendant was charged with possession of "precursors" used in the illegal manufacture of controlled substances, having purchased or having attempted to purchase quantities of the subject common cold medication, the anonymous tip information given to the officer who con-

ducted the investigatory stop included the color of the van, the number and race of occupants, the license plate number and the direction of travel, including the name of the street. All of those details were verified by officer prior to the investigatory questioning, and under the totality of the evidence standard, the investigatory stop based on the anonymous tip was lawful. *Williamson v. State*, 876 So. 2d 353 (Miss. 2004).

7. Unit of measurement.

Miss. Code Ann. § 41-29-313 does not provide any discretionary privileges to prosecutors concerning the unit of measurement that should be used in prosecuting drug cases where dosage units are the standard form of measurement, and the weight of the drug is considered a default measurement where the drug is not found in "dosage unit" form; therefore, a motion for post-conviction relief should have been granted because a sentence imposed was illegal where defendant had 180 tablets that weighed above the requisite number of grams. *Finn v. State*, 979 So. 2d 1 (Miss. Ct. App. 2007).

8. Jury instructions.

Defendant who was found guilty of attempted manufacture of methamphetamine under Miss. Code Ann. § 41-29-313(1)(c) did not show that counsel was deficient in failing to request a jury instruction on possession of precursor chemicals under Miss. Code Ann. § 41-29-139(b)(1) because the two offenses carried the same penalty. *Myhand v. State*, 981 So. 2d 988 (Miss. Ct. App. 2007).

9. Sentence.

Post-conviction relief was denied without an evidentiary hearing where defendant pled guilty to a drug charge because the trial court informed him of the consequences of the plea, despite an attorney's prediction that he would receive less time; moreover, a 34-year sentence was not disproportionate since it was within the limits of Miss. Code Ann. § 41-29-313 and Miss. Code Ann. § 41-29-147. *Bridges v. State*, 973 So. 2d 246 (Miss. Ct. App. 2007).

Where defendants were found guilty of possession of precursor chemicals with the intent to manufacture methamphet-

amines, their respective sentences of 25 years in the custody of the Mississippi Department of Corrections and a fine of \$ 10,000, were well within the statutory limits of Miss. Code Ann. § 41-29-313(1)(b), and a perusal of Mississippi's case law clearly demonstrated that they were not subjected to sentences so excessive as to warrant the appellate court's review. *Pittman v. State*, 904 So. 2d 1185 (Miss. Ct. App. 2004).

Sentence imposed on defendant for the convictions of possession of a controlled substance and possession of precursor chemicals with intent to manufacture a controlled substance was not unduly harsh, given that defendant, not the girlfriend, was the driving force behind the drug activity at the couple's place of residence. *Pipkins v. State*, 878 So. 2d 119 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

On appeal, defendant alleged that the trial court's sentence for his first offense constituted cruel and unusual punishment in violation of the Eighth Amendment, but consideration of first time offender status was not the only consideration of the trial judge when sentencing defendant to the maximum sentence available and defendant's sentence was not grossly disproportionate to the crime of possession of precursor drugs with knowledge that the drugs would be used to manufacture a controlled substance of which he was convicted; thus, the trial judge did not abuse his discretion in sentencing defendant to the maximum penalty available within the statute, Miss. Code Ann. § 41-29-313. *Burchfield v. State*, — So. 2d —, 2003 Miss. App. LEXIS 660 (Miss. Ct. App. July 22, 2003).

ATTORNEY GENERAL OPINIONS

A violation of Section 41-29-313 (2)(c)(i) may consist of possession of less than 250 dosage units but more than 15 grams, or less than 15 grams but more than 250

dosage units. Under either scenario the penalty under Section 41-29-313(2)(d) is the same. *Luther*, May 19, 2006, A.G. Op. 06-0180.

§ 41-29-315. Restrictions on purchase and sale of certain methamphetamine precursors; penalties.

(1) For the purposes of this section, the following words and phrases shall have the meanings attributed to them unless the context clearly requires otherwise:

(a) "Pseudoephedrine" means pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(b) "Ephedrine" means ephedrine, its salts or optical isomers, or salts of optical isomers.

(c) "Tablet" means a solid dosage form of varying weight, size and shape that may be molded or compressed and that contains a medicinal substance in pure or diluted form; the term also includes "caplet" but does not include "capsule."

(d) "Capsule" means a dosage form in which a medicinal substance is enclosed by either a hard or soft soluble outer shell.

(2)(a) A retail establishment or individual shall not transfer, sell, deliver, distribute, dispense or provide to a consumer in a single day more than three and six-tenths (3.6) grams of pseudoephedrine base or ephedrine base.

(b) No person shall purchase, receive, or otherwise acquire in a single day more than three and six-tenths (3.6) grams of pseudoephedrine base or ephedrine base.

(c) No person shall purchase, receive, or otherwise acquire more than nine (9) grams of any compound, mixture or preparation containing pseudoephedrine base or ephedrine base within any thirty-day period; this quantity limitation shall not apply to any quantity of compound, mixture or preparation containing pseudoephedrine or ephedrine dispensed pursuant to a valid prescription.

(d)(i) All packages of tablets containing pseudoephedrine or ephedrine shall be stored by retail establishments by placing the product behind a counter where the public does not have direct access.

(ii) The retailer shall deliver the product directly into the custody of the purchaser.

(iii) In accordance with criteria issued by the United States Attorney General, maintain a written or electronic log of sales that identifies products by name, quantity sold, the name and address of purchasers, and the dates and times of the sales.

1. The seller shall determine that the name entered in the logbook corresponds to the name provided on the purchaser's proof of identification and that the date and time of purchase are correct.

2. The seller shall check that the name of products and quantity sold are correct.

3. The logbook must include, in accordance with criteria of the Attorney General, a notice to purchasers that entering false statements or misrepresentations in the logbook may subject purchasers to criminal penalties under 18 USC 1001, which notice specifies the maximum fine and term of imprisonment under such section.

4. The seller shall maintain each entry in the logbook for not fewer than two (2) years after the date on which the entry is made.

5. Individuals who are responsible for delivering such products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products shall undergo training provided by the seller to ensure that the individuals understand the requirements as established by the Attorney General; certification of such training shall be submitted by the seller to the Attorney General.

6. The log requirements shall not apply to purchases of single sale packages containing no more than sixty (60) milligrams of pseudoephedrine.

(e) Every wholesaler of pseudoephedrine or ephedrine products shall provide the Bureau of Narcotics with copies of all sales receipts of such products upon request of the bureau. Wholesalers shall be required to maintain this information for a period of not less than one (1) year.

(3) The retail sale of any nonliquid compound, mixture or preparation containing pseudoephedrine or ephedrine is limited to sales in blister packages containing not more than a total of two (2) dosage units per blister of pseudoephedrine or ephedrine; "dosage unit" shall have the meaning ascribed in Section 41-29-139.

(4) No retailer may sell to any person any product or products containing pseudoephedrine or ephedrine unless the retailer requires the purchaser to

display photo identification and sign a logbook as required in subsection (2) (d) (iii) in order to complete the purchase.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, any violation of this section is a misdemeanor subject to a fine of not more than Two Hundred Fifty Dollars (\$250.00).

(b) Any person who shall transfer, sell, deliver, distribute, dispense, provide, or purchase, receive, or otherwise acquire two hundred fifty (250) or more dosage units or fifteen (15) grams or more in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine in a single retail transaction, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment for not more than five (5) years, or both.

(c) A retailer who is the general owner or operator of an establishment that sells pseudoephedrine or ephedrine products shall not be penalized pursuant to this section if the retailer documents that an employee training program was conducted to train employees on compliance with this section.

SOURCES: Laws, 2005, ch. 309, § 1; Laws, 2009, ch. 540, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote (2) and (3); inserted “and sign a logbook as required in subsection (2)(d)(iii)” in (4); and made a minor stylistic change.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 41-29-317. Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem.

(1) The Bureau of Narcotics may develop and maintain a program to inform retailers about the methamphetamine problem in the state and devise procedures and forms for retailers to use in reporting to the Bureau of Narcotics suspicious purchases, thefts or other transactions involving any products under the retailer’s control which contain a regulated precursor under the provisions of Section 41-29-313 or 41-29-315 including, but not limited to, over-the-counter, nonprescription pseudoephedrine products.

(2) Reporting by retailers as required by this section shall be voluntary.

(3) Retailers reporting information to the Bureau of Narcotics in good faith pursuant to this section shall be immune from civil and criminal liability for a violation of Section 41-29-313 or 41-29-315.

SOURCES: Laws, 2005, ch. 309, § 2, eff from and after July 1, 2005.

ARTICLE 7.

INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

| | |
|------------|--|
| SEC. | |
| 41-29-501. | Definitions. |
| 41-29-503. | Admissibility of evidence obtained in violation of this article. |
| 41-29-505. | Judicial order authorizing interception of communications. |
| 41-29-507. | Bureau of Narcotics only agency authorized to possess, operate, etc. monitoring devices; exceptions. |
| 41-29-509. | Procedures for obtaining court order authorizing interception of communication. |
| 41-29-511. | Disclosure and use of information obtained from intercepted communication; privileged communications. |
| 41-29-513. | Form and content of application for order authorizing interception of communication; ex parte hearing. |
| 41-29-515. | Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge. |
| 41-29-517. | Recording of intercepted communications; sealing, custody, and destruction of recordings. |
| 41-29-519. | Sealing, custody, and destruction of applications and orders. |
| 41-29-521. | Penalty for violating Sections 41-29-517 and 41-29-519. |
| 41-29-523. | Notice to persons named in order or application; inspection of intercepted communications; postponement of notice. |
| 41-29-525. | Parties to be furnished copy of court order and application prior to trial or proceeding; suppression of intercepted communications. |
| 41-29-527. | Reports to Administrative Office of United States Courts; report to legislature. |
| 41-29-529. | Civil action for violation of this article. |
| 41-29-531. | Exceptions to civil liability for violation of this article. |
| 41-29-533. | Penalties for violations of this article. |
| 41-29-535. | Applicability of article. |
| 41-29-536. | Motions for communication records to aid in investigations of violations of the Uniform Controlled Substances Law. |
| 41-29-537. | Repealed |

§ 41-29-501. Definitions.

As used in this article, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

(a) "Aggrieved person" means a person who was a party to an intercepted wire, oral or other communication or a person against whom the interception was directed.

(b) "Communication common carrier" has the meaning given the term "common carrier" by 47 USCS 153(h) and shall also mean a provider of communication services.

(c) "Contents," when used with respect to a wire, oral or other communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport or meaning of that communication.

(d) "Covert entry" means any entry into or onto premises which if made without a court order allowing such an entry under this article would be a violation of criminal law.

(e) "Director" means the Director of the Bureau of Narcotics or, if the director is absent or unable to serve, the Assistant Director of the Bureau of Narcotics.

(f) "Electronic, mechanical or other device" means a device or apparatus primarily designed or used for the nonconsensual interception of wire, oral or other communications.

(g) "Intercept" means the aural or other acquisition of the contents of a wire, oral or other communication through the use of an electronic, mechanical or other device.

(h) "Investigative or law enforcement officer" means an officer of this state or of a political subdivision of this state who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in Section 41-29-505, an attorney authorized by law to prosecute or participate in the prosecution of such offenses, or a federal law enforcement officer designated by the director.

(i) "Judge of competent jurisdiction" means a justice of the Supreme Court or a circuit court judge.

(j) "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation.

(k) "Other communication" means any transfer of an electronic or other signal, including fax signals, computer generated signals, other similar signals, or any scrambled or encrypted signal transferred via wire, radio, electromagnetic, photoelectric or photooptical system from one party to another in which the involved parties may reasonably expect the communication to be private.

(l) "Prosecutor" means a district attorney with jurisdiction in the county in which the facility or place where the communication to be intercepted is located or a legal assistant to the district attorney if designated in writing by the district attorney on a case-by-case basis.

(m) "Residence" means a structure or the portion of a structure used as a person's home or fixed place of habitation to which the person indicates an intent to return after any temporary absence.

(n) "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications and includes cordless telephones, voice pagers, cellular telephones, any mobile telephone, or any communication conducted through the facilities of a provider of communication services.

SOURCES: Laws, 1989, ch. 553, § 1; repealed, 1989, ch. 553, § 19; reenacted, 1992, ch. 561, § 1; Laws, 1995, ch. 520, § 1; reenacted without change, Laws, 2004, ch. 511, § 1; Laws, 2005, ch. 463, § 6, eff from and after July 1, 2005.

Editor's Note — 47 USCS 153(h) referred to in this section was amended several times since 1989; one significant amendment in 1996 redesignated the paragraphs and reordered them numerically rather than alphabetically; the same amendment also stated that “the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934” (47 USCS 153). The term “common carrier” is currently defined in 47 USCS 153(10).

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of “pen register” to record outgoing numbers dialed or incoming communication, see § 41-29-701.

Federal Aspects — Communication common carrier, defined, see 47 USCS § 153(h).

JUDICIAL DECISIONS

1. Oral communication.
2. Other communication.

1. Oral communication.

Under the terms of subsection (j), the circumstances of the drug buy at issue did not justify an expectation that the conversations between the defendant and the purchasers would not be intercepted where the defendant sold marijuana to unknown persons in a public parking lot. *Ott v. State*, 722 So. 2d 576 (Miss. 1998).

2. Other communication.

Under the terms of subsection (k), the circumstances of the drug buy at issue did not justify an expectation that the conversations between the defendant and the purchasers would be private where the defendant sold marijuana to unknown persons in a public parking lot. *Ott v. State*, 722 So. 2d 576 (Miss. 1998).

§ 41-29-503. Admissibility of evidence obtained in violation of this article.

The contents of an intercepted wire, oral or other communication and evidence derived from an intercepted wire, oral or other communication may not be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States or of this state or a political subdivision of this state if the disclosure of that information would be in violation of this article. The contents of an intercepted wire, oral or other communication and evidence derived from an intercepted communication may be received in a civil trial, hearing or other proceeding only if the civil trial, hearing or other proceeding arises out of a violation of the criminal law of this state.

SOURCES: Laws, 1989, ch. 553, § 2; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 2; Laws, 1995, ch. 520, § 2; reenacted without change, Laws, 2004, ch. 511, § 2, eff from and after July 1, 2004.

Editor's Note — Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of “pen register” to record outgoing numbers dialed or incoming communication, see § 41-29-701.

JUDICIAL DECISIONS

Defendant was not deprived of effective assistance of counsel by counsel's failure to challenge the admission of an audio-tape of a drug transaction where the trial court had already ruled at a pretrial hear-

ing that defendant had no reasonable expectation of privacy in the taped conversation and that therefore the recording was admissible at trial. *Benson v. State*, 821 So. 2d 823 (Miss. 2002).

RESEARCH REFERENCES

ALR. Mode of establishing that information obtained by illegal wire tapping has or has not led to evidence introduced by prosecution. 28 A.L.R.2d 1055.

Admissibility, in criminal prosecution, of evidence secured by mechanical or electronic eavesdropping device. 97 A.L.R.2d 1283.

Eavesdropping as violating right of privacy. 11 A.L.R.3d 1296.

Violation of federal constitutional rule (*Mapp v. Ohio*) excluding evidence obtained through unreasonable search or seizure, as constituting reversible or harmless error. 30 A.L.R.3d 128.

“Fruit of the poisonous tree” doctrine excluding evidence derived from information gained in illegal search. 43 A.L.R.3d 385.

Admissibility, in criminal prosecution, of evidence obtained by electronic surveillance of prisoner. 57 A.L.R.3d 172.

Omission or inaudibility of portions of sound recording as affecting its admissibility in evidence. 57 A.L.R.3d 746.

Admissibility in evidence of sound recording as affected by hearsay and best evidence rules. 58 A.L.R.3d 598.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Permissible surveillance, under state communications interception statute, by person other than state or local law enforcement officer or one acting in concert with officer. 24 A.L.R.4th 1208.

Permissible warrantless surveillance, under state communications interception statute, by state or local law enforcement officer or one acting in concert with officer. 27 A.L.R.4th 449.

Admissibility of expert testimony as to modus operandi of crime — modern cases. 31 A.L.R.4th 798.

Eavesdropping on extension telephone as invasion of privacy. 49 A.L.R.4th 430.

Propriety of attorney's surreptitious sound recording of statements by others who are or may become involved in litigation. 32 A.L.R.5th 715.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child — state cases. 51 A.L.R.5th 425.

What constitutes adequate response by government, pursuant to 18 USCS § 3504, affirming or denying use of unlawful electronic surveillance. 53 A.L.R. Fed. 378.

What constitutes compliance by government agents with requirement of 18 USCS § 2518(5) that wiretapping and electronic surveillance be conducted in such manner as to minimize unauthorized interception of communications. 54 A.L.R. Fed. 120.

Under what circumstances is suppression of wiretap evidence required when person overheard in wiretap but not mentioned in order therefor is not served with inventory notice provided for by 18 USCS § 2518(8)(d). 54 A.L.R. Fed. 599.

Applicability of provisions of Omnibus Crime Control and Safe Streets Act of 1968 prohibiting interception of wire or oral communications (18 USCS § 2511(1))

to interception by spouse, or spouse's agent, of conversation of other spouse in marital home. 55 A.L.R. Fed. 936.

Application to extension telephones of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq.), pertaining to interception of wire communications. 58 A.L.R. Fed. 594.

Right of immune jury witness to obtain access to government affidavits and other supporting materials in order to challenge legality of court-ordered wiretap or electronic surveillance which provided basis for questions asked in grand jury proceedings. 60 A.L.R. Fed. 706.

Propriety of monitoring of telephone calls to or from prison inmates under Title III of Omnibus Crime Control and Safe Streets Act (18 USCS §§ 2510 et seq.) prohibiting judicially unauthorized interception of wire or oral communications. 61 A.L.R. Fed. 825.

What claims are sufficient to require government, pursuant to 18 USCS § 3504, to affirm or deny use of unlawful electronic surveillance. 70 A.L.R. Fed. 67.

Applicability, in civil action, of provisions of Omnibus Crime Control and Safe Streets Act of 1986, prohibiting interception of communications (18 USCS § 2511(1)), to interceptions by spouse, or spouse's agent, of conversations of other spouse. 139 A.L.R. Fed. 517.

Am Jur. 74 Am. Jur. 2d, Telecommunications § 218.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 66 (complaint, petition, or declaration — by former employee — acts and conduct of employer in enforcement of random urinalysis drug testing procedures).

29 Am. Jur. Proof of Facts 591, Wiretapping, §§ 20, 21.

1 Am. Jur. Trials 481, Investigating the Criminal Case; General Principles.

15 Am. Jur. Trials 555, Police Misconduct Litigation — Plaintiff's Remedies.

8 Federal Procedure, L. Ed., Criminal Procedure §§ 22:171 et seq.

7 Federal Procedural Forms, L. Ed., Criminal Procedure, §§ 20:493, 20:584, 20:623, 20:1033.

Lawyers' Edition. Admissibility of evidence obtained by wiretapping as affected by § 605 of the Federal Communications Act (47 USC § 605) — federal cases. 20 L. Ed. 2d 1718.

Propriety of federal injunction against use in state criminal trial of evidence unlawfully obtained. 27 L. Ed. 2d 984.

Obtaining evidence by use of sound recording or of mechanical or electronic eavesdropping device ("bugging") as violation of Fourth Amendment — federal cases. 59 L. Ed. 2d 959.

§ 41-29-505. Judicial order authorizing interception of communications.

A judge of competent jurisdiction in the circuit court district of the location where the interception of wire, oral or other communications is sought, or a circuit court district contiguous to such circuit court district, may issue an order authorizing interception of wire, oral or other communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of a felony under the Uniform Controlled Substances Law.

SOURCES: Laws, 1989, ch. 553, § 3; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 3; Laws, 1995, ch. 520, § 3; reenacted without change, Laws, 2004, ch. 511, § 3, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 3, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of “pen register” to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR. Authority of District Court to enforcement agents in tracing telephone order telephone company to assist law calls. 58 A.L.R. Fed. 719.

§ 41-29-507. Bureau of Narcotics only agency authorized to possess, operate, etc. monitoring devices; exceptions.

(1) No person, agency of the state or political subdivision of the state, other than the Bureau of Narcotics, is authorized by this article to own, possess, install, operate or monitor an electronic, mechanical or other device. The Bureau of Narcotics may be assisted by an investigative or law enforcement officer in the operation and monitoring of an interception of wire, oral or other communications, provided that an agent of the Bureau of Narcotics is present at all times.

(2) The director shall designate, in writing, the agents of the Bureau of Narcotics who are responsible for the possession, installation, operation and monitoring of electronic, mechanical or other devices for the bureau.

SOURCES: Laws, 1989, ch. 553, § 4; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 4; Laws, 1995, ch. 520, § 4; Laws, 1999, ch. 403, § 1; reenacted without change, Laws, 2004, ch. 511, § 4, eff from and after July 1, 2004.

Editor’s Note — This section was reenacted without change by Laws, 2004, ch. 511, § 4, effective from and after July 1, 2004

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of “pen register” to record outgoing numbers dialed or incoming communication, see § 41-29-701.

ATTORNEY GENERAL OPINIONS

A private individual not associated with any agency of the state or its political subdivisions may be charged and prosecuted under the statute. Jones, August 21, 1998, A.G. Op. #98-0462.

§ 41-29-509. Procedures for obtaining court order authorizing interception of communication.

Prior to submitting a request for an order authorizing interception of wire, oral or other communications to a prosecutor, the director shall receive a written affidavit from one or more agents of the Bureau of Narcotics setting forth the information required by Section 41-29-513(1). The director shall submit all information required by Section 41-29-513(1) to the prosecutor. Upon receipt of the request from the director, the prosecutor shall be authorized to submit an application to a court of competent jurisdiction requesting

the court to issue an order authorizing interception of wire, oral or other communications as provided in Section 41-29-515.

SOURCES: Laws, 1989, ch. 553, § 5; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 5; Laws, 1995, ch. 520, § 5; reenacted without change, Laws, 2004, ch. 511, § 5, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 5, effective from and after July 1, 2004

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-511. Disclosure and use of information obtained from intercepted communication; privileged communications.

(1) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire, oral or other communication or evidence derived from such communication may disclose the contents or evidence to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) An investigative or law enforcement officer who, by any means authorized by this article, obtains knowledge of the contents of a wire, oral or other communication or evidence derived from such communication may use the contents or evidence to the extent the use is appropriate to the proper performance of his official duties.

(3) A person who receives, by any means authorized by this article, information concerning a wire, oral or other communication or evidence derived from a wire, oral or other communication intercepted in accordance with the provisions of this article may disclose the contents of such communication or the evidence derived from such wire, oral or other communication while giving testimony under oath in any proceeding held under the authority of the United States, of this state, or of a political subdivision of this state.

(4) An otherwise privileged wire, oral or other communication intercepted in accordance with, or in violation of, the provisions of this article does not lose its privileged character, and any evidence derived from such privileged communication against the party to the privileged communication shall be considered privileged also.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or other communications in a manner authorized by this article, intercepts wire, oral or other communications relating to offenses other than those specified in the order of authorization, the contents of and evidence derived from the communication may be disclosed or used as provided by subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized by a judge of competent jurisdiction where the judge finds, upon

subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this article. The application shall be made as soon as practicable.

SOURCES: Laws, 1989, ch. 553, § 6; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 6; Laws, 1995, ch. 520, § 6; reenacted without change, Laws, 2004, ch. 511, § 6, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 6, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Duplication of recordings for use or disclosure, and requirement of seal on recording as prerequisite to disclosure, see § 41-29-517.

Penalties for violation of the provisions of this section, see § 41-29-533.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-513. Form and content of application for order authorizing interception of communication; ex parte hearing.

(1) To be valid, an application for an order authorizing the interception of a wire, oral or other communication must be made in writing under oath to a judge of competent jurisdiction in the circuit court district of the location where the interception of wire, oral or other communications is sought, or a circuit court district contiguous to such circuit court district, and must state the applicant's authority to make the application. An applicant must include the following information in the application:

(a) A statement that the application has been requested by the director and the identity of the prosecutor making the application;

(b) A full and complete statement of the facts and circumstances relied on by the applicant to justify his belief that an order should be issued including:

(i) Details about the particular offense that has been, is being, or is about to be committed;

(ii) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) A particular description of the type of communication sought to be intercepted; and

(iv) The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication is first obtained, a particular description of the facts establishing probable cause to believe that additional

communications of the same type will occur after the described type of communication is obtained;

(e) A statement whether a covert entry will be necessary to properly and safely install the wiretapping or electronic surveillance or eavesdropping equipment and, if a covert entry is requested, a statement as to why such an entry is necessary and proper under the facts of the particular investigation, including a full and complete statement as to whether other investigative techniques have been tried and have failed or why they reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time;

(f) A full and complete statement of the facts concerning all applications known to the prosecutor making the application that have been previously made to a judge for authorization to intercept wire, oral or other communications involving any of the persons, facilities or places specified in the application and of the action taken by the judge on each application; and

(g) If the application is for the extension of an order, a statement setting forth the results already obtained from the interception or a reasonable explanation of the failure to obtain results.

(2) The judge may, in an ex parte in camera hearing, require additional testimony or documentary evidence in support of the application, and such testimony or documentary evidence shall be preserved as part of the application.

SOURCES: Laws, 1989, ch. 553, § 7; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 7; Laws, 1995, ch. 520, § 7; reenacted without change, Laws, 2004, ch. 511, § 7, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 7, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Procedures for obtaining court order authorizing interception of communication, see § 41-29-509.

Time limit on order authorizing interception of communication, and extension thereof, see § 41-29-515.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR. Who may apply or authorize application for order to intercept wire or oral communications under Title III of Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq). 64 A.L.R. Fed. 115.

§ 41-29-515. Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge.

(1) Upon receipt of an application, the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or other

communications if the judge determines from the evidence submitted by the applicant that:

(a) There is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense enumerated in Section 41-29-505;

(b) There is probable cause to believe that particular communications concerning that offense will be obtained through the interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed or to be too dangerous if tried;

(d) There is probable cause to believe that the facilities from which or the place where the wire, oral or other communications are to be intercepted are being used or are about to be used in connection with the commission of an offense or are leased to, listed in the name of, or commonly used by the person; and

(e) A covert entry is or is not necessary to properly and safely install the electronic, mechanical or other device.

(2) Each order authorizing the interception of a wire or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which or the place where authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) A statement setting forth the identity of the prosecutor and stating that the director has requested the prosecutor to apply for the order authorizing the interception;

(e) The time during which the interception is authorized, including a statement of whether or not the interception will automatically terminate when the described communication is first obtained; and

(f) Whether or not a covert entry is necessary to properly and safely install wiretapping, electronic surveillance or eavesdropping equipment.

(3) The order authorizing the interception of a wire, oral or other communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person furnish the applicant all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier, landlord, custodian or other person is providing the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing facilities or technical assistance is entitled to compensation by the applicant for the facilities or assistance at the prevailing rates.

(4) An order entered pursuant to this section may not authorize the interception of a wire, oral or other communication for longer than is necessary to achieve the objective of the authorization, and in no event may it authorize interception for more than thirty (30) days. The issuing judge may grant

extensions of an order, but only upon application for an extension made in accordance with Section 41-29-513 and the court making the findings required by subsection (1) of this section. The period of extension may not be longer than the authorizing judge deems necessary to achieve the purposes for which it is granted, and in no event may the extension be for more than thirty (30) days. To be valid, each order and extension of an order shall provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this article, and terminate on obtaining the authorized objective or within thirty (30) days, whichever occurs sooner.

(5) An order entered pursuant to this section may not authorize a covert entry into a residence solely for the purpose of intercepting a wire communication.

(6) An order entered pursuant to this section may not authorize a covert entry into or onto a premises for the purpose of intercepting an oral or other communication unless:

(a) The judge, in addition to making the determinations required under subsection (1) of this section, determines that:

(i)(A) The premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of a pen register previously authorized in connection with the same investigation; (B) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of an interception of wire communications previously authorized in connection with the same investigation; (C) that such procedures have failed; and (D) if the order is for the interception of other communications and requires covert entry, a court-ordered attempt to intercept the communications without using covert entry must have been made without success;

(ii) That the procedures enumerated in item (i) reasonably appear to be unlikely to succeed or to be too dangerous if tried or are not feasible under the circumstances or exigencies of time; and

(b) The order, in addition to the matters required to be specified under subsection (2) of this section, specifies that the covert entry is for the purpose of intercepting oral communications of two (2) or more persons and that there is probable cause to believe they are committing, have committed, or are about to commit a particular offense enumerated in Section 41-29-505.

(7) The judge of a court of competent jurisdiction may issue an order for the interception of wire, oral or other communications conducted within a vehicle, vessel, other mode of transportation or any location where a reasonable expectation of privacy might exist, provided the requirements of this section, where applicable, are met.

(8) Whenever an order authorizing interception is entered pursuant to this article, the order may require reports to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at any interval the judge requires.

(9) A judge who issues an order authorizing the interception of a wire, oral or other communication may not hear a criminal prosecution in which evidence derived from the interception may be used or in which the order may be an issue.

(10) An order issued pursuant to this section authorizing the interception of any cellular, portable, transportable or mobile telephone or communication instrument is valid throughout the State of Mississippi unless otherwise specified by the issuing judge.

SOURCES: Laws, 1989, ch. 553, § 8; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 8; Laws, 1995, ch. 520, § 8; Laws, 1998, ch. 343, § 1; reenacted without change, Laws, 2004, ch. 511, § 8, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 8, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Procedures for obtaining court order authorizing interception of communication, see § 41-29-509.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-517. Recording of intercepted communications; sealing, custody, and destruction of recordings.

(1) The contents of a wire, oral or other communication intercepted by means authorized by this article shall be recorded on tape, wire or other comparable device. The recording of the contents of a wire, oral or other communication under this subsection shall be done in a way that protects the recording from editing or other alterations.

(2) Immediately on the expiration of the period of the order and all extensions, if any, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. The recordings may not be destroyed until at least ten (10) years after the date of expiration of the order and the last extension, if any. A recording may be destroyed only by order of the judge of competent jurisdiction who authorized the interception, or his successor.

(3) Duplicate recordings may be made for use or disclosure pursuant to subsections (1) and (2) of Section 41-29-511 for investigations.

(4) The presence of the seal required by subsection (2) of this section, or a satisfactory explanation of its absence, shall be a prerequisite for the use or disclosure of the contents of a wire, oral or other communication or evidence derived from the communication under subsection (3) of Section 41-29-511.

SOURCES: Laws, 1989, ch. 553, § 9; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 9; Laws, 1995, ch. 520, § 9; reenacted without change, Laws, 2004, ch. 511, § 9, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 9, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Punishment of violation of this section as contempt, see § 41-29-521.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

§ 41-29-519. Sealing, custody, and destruction of applications and orders.

The judge shall seal each application made and order granted under this article. Custody of the applications and orders shall be wherever the judge directs. An application or order may be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and may not be destroyed until at least ten (10) years after the date it is sealed. An application or order may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which it was made or granted.

SOURCES: Laws, 1989, ch. 553, § 10; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 10; reenacted without change, Laws, 2004, ch. 511, § 10, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 10, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Punishment of violation of this section as contempt, see § 41-29-521.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR. Delay in sealing or failure to seal tape or wire recording as required by 18 USC § 2518(8)(a) as ground for suppression of such recording at trial. 62 A.L.R. Fed. 636.

§ 41-29-521. Penalty for violating Sections 41-29-517 and 41-29-519.

A violation of Section 41-29-517 or 41-29-519 shall be punished as contempt of court.

SOURCES: Laws, 1989, ch. 553, § 11; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 11; reenacted without change, Laws, 2004, ch. 511, § 11, eff from and after July 1, 2004.

Editor's Note — Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-523. Notice to persons named in order or application; inspection of intercepted communications; postponement of notice.

(1) Within a reasonable time but not later than ninety (90) days after the date an application for an order is denied or after the date an order or the last extension, if any, expires, the judge who granted or denied the application shall cause to be served upon the persons named in the order or the application and any other parties to intercepted communications deemed appropriate by the issuing judge, if any, an inventory, which shall include notice:

- (a) Of the entry of the order or the application;
- (b) Of the date of the entry and the period of authorized interception or the date of denial of the application; and
- (c) That during the authorized period wire, oral or other communications were or were not intercepted.

(2) The judge, upon motion, may, in his discretion, make available for inspection to any person or persons whose oral communications have been intercepted, or their counsel, any portion of an intercepted communication, application or order that the judge determines is in the interest of justice to disclose to that person.

(3) Upon an ex parte showing of good cause to the judge, the serving of the inventory required by this section may be postponed, but in no event may any evidence derived from an order under this article be disclosed in any trial until after such inventory has been served.

SOURCES: Laws, 1989, ch. 553, § 12; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 12; Laws, 1995, ch. 520, § 10; Laws, 1998, ch. 343, § 2; reenacted without change, Laws, 2004, ch. 511, § 12, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 12, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR. Right of accused in state courts to inspection or disclosure of evidence in possession of prosecution. 7 A.L.R.3d 8.

§ 41-29-525. Parties to be furnished copy of court order and application prior to trial or proceeding; suppression of intercepted communications.

(1) The contents of an intercepted wire, oral or other communication or evidence derived from the communication may not be received in evidence or

otherwise disclosed in a trial, hearing or other proceeding in a federal or state court unless each party has been furnished with a copy of the court order and application under which the interception was authorized or approved not less than ten (10) days before the date of the trial, hearing or other proceeding. The ten-day period may be waived by the judge if he finds that it is not possible to furnish the party with the information ten (10) days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(2) An aggrieved person charged with an offense in a trial, hearing or proceeding in or before a court, department, officer, agency, regulatory body, or other authority of the United States or of this state or a political subdivision of this state, may move to suppress the contents of a intercepted wire, oral or other communication or evidence derived from the communication on the ground that:

- (a) The communication was unlawfully intercepted;
- (b) The order authorizing the interception is insufficient on its face; or
- (c) The interception was not made in conformity with the order.

(3) The motion to suppress shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion before the trial, hearing or proceeding, or the person was not aware of the grounds of the motion before the trial, hearing or proceeding. The hearing on the motion shall be held in camera upon the written request of the aggrieved person. If the motion is granted, the contents of the intercepted wire, oral or other communication and evidence derived from the communication shall be treated as inadmissible evidence. The judge, on the filing of the motion by the aggrieved person, shall make available to the aggrieved person or his counsel for inspection any portion of the intercepted communication or evidence derived from the communication that the judge determines is in the interest of justice to make available.

(4) Any circuit judge of this state, upon hearing a pretrial motion regarding conversations intercepted by wire pursuant to this article, or who otherwise becomes informed that there exists on such intercepted wire, oral or other communication identification of a specific individual who is not a party or suspect to the subject of interception:

- (a) Shall give notice and an opportunity to be heard on the matter of suppression of references to that person if identification is sufficient so as to give notice; or
- (b) Shall suppress references to that person if identification is sufficient to potentially cause embarrassment or harm which outweighs the probative value, if any, of the mention of such person, but insufficient to require the notice provided for in paragraph (a) of this subsection.

SOURCES: Laws, 1989, ch. 553, § 13; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 13; Laws, 1995, ch. 520, § 11; reenacted without change, Laws, 2004, ch. 511, § 13, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 13, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

JUDICIAL DECISIONS

Defendant was not deprived of effective assistance of counsel by counsel's failure to challenge the admission of an audio-tape of a drug transaction where the trial court had already ruled at a pretrial hear-

ing that defendant had no reasonable expectation of privacy in the taped conversation and that therefore the recording was admissible at trial. *Benson v. State*, 821 So. 2d 823 (Miss. 2002).

§ 41-29-527. Reports to Administrative Office of United States Courts; report to legislature.

(1) Within thirty (30) days after the date an order or the last extension, if any, expires or after the denial of an order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

- (a) The fact that an order or extension was applied for;
- (b) The kind of order or extension applied for;
- (c) The fact that the order or extension was granted as applied for, was modified or was denied;
- (d) The period of interceptions authorized by the order and the number and duration of any extensions of the order;
- (e) The offense specified in the order or application or extension;
- (f) The identity of the officer making the request and the prosecutor making the application; and
- (g) The nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:

- (a) The information required by subsection (1) of this section with respect to each application for an order or extension made;
- (b) A general description of the interceptions made under each order or extension, including the approximate nature and frequency of incriminating communications intercepted, the approximate nature and frequency of order communications intercepted, the approximate number of persons whose communications were intercepted, and the approximate nature, amount and cost of the manpower and other resources used in the interceptions;
- (c) The number of arrests resulting from interceptions made under each order or extension and the offenses for which arrests were made;
- (d) The number of trials resulting from interceptions;
- (e) The number of motions to suppress made with respect to interceptions and the number granted or denied;

(f) The number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and

(g) The information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained.

(3) Any judge or prosecutor required to file a report with the Administrative Office of the United States Courts shall forward a copy of such report to the director. On or before January 5 of each year the director shall submit to the Mississippi Administrative Office of Courts a report of all intercepts, as defined in this subsection and as required by federal law which relates to statistical data only, conducted pursuant to this article and terminated during the preceding calendar year. Such report shall include:

(a) The report of judges and prosecuting attorneys forwarded to the director as required by this section;

(b) The number of Bureau of Narcotics personnel authorized to possess, install or operate electronic, mechanical or other devices;

(c) The number of Bureau of Narcotics and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and

(d) The total cost to the Bureau of Narcotics of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower and expenses incurred as compensation for use of facilities or technical assistance provided by the bureau.

SOURCES: Laws, 1989, ch. 553, § 14; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 14; Laws, 1995, ch. 520, § 12; reenacted without change, Laws, 2004, ch. 511, § 14, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 14, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-529. Civil action for violation of this article.

(1) A person whose wire, oral or other communication is intercepted, disclosed or used in violation of this article shall have a civil cause of action against any person who intercepts, discloses or uses or procures another person to intercept, disclose or use the communication, and is entitled to recover from the person:

(a) Actual damages but not less than liquidated damages computed at a rate of One Hundred Dollars (\$100.00) a day for each day of violation or One Thousand Dollars (\$1,000.00), whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

(2) A good faith reliance on a court order is a complete defense to any civil or criminal action brought under this article.

SOURCES: Laws, 1989, ch. 553, § 15; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 15; Laws, 1995, ch. 520, § 13; reenacted without change, Laws, 2004, ch. 511, § 15, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 15, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Punitive damages, generally, see § 11-1-65.

Exceptions to civil liability imposed by this section for violation of article, see § 41-29-531.

Use of "pen register" to record outgoing numbers dialed or incoming communication, see § 41-29-701.

RESEARCH REFERENCES

ALR. Construction and application of state statutes authorizing civil cause of action by person whose wire or oral communication is intercepted, disclosed, or used in violation of statutes. 33 A.L.R.4th 506.

Construction and application of provi-

sion of Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C.S. § 2520) authorizing civil cause of action by person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of Act. 164 A.L.R. Fed. 139.

§ 41-29-531. Exceptions to civil liability for violation of this article.

This article shall not apply to:

(a) An operator of a switchboard, or an officer, employee or agent of a communication common carrier whose facilities are used in the transmission of a wire communication, intercepts a communication, or who discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication;

(b) An officer, employee or agent of a communication common carrier who employs or uses any equipment or device which may be attached to any telephonic equipment of any subscriber which permits the interception and recording of any telephonic communications solely for the purposes of business service improvements;

(c) An officer, employee or agent of a communication common carrier who provides information, facilities or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire, oral or other communication;

(d) A person acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one

(1) of the parties to the communication has given prior consent to the interception; or

(e) A person not acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this state, or for the purpose of committing any other injurious act.

SOURCES: Laws, 1989, ch. 553, § 16; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 16; Laws, 1995, ch. 520, § 14; Laws, 1999, ch. 403, § 2; reenacted without change, Laws, 2004, ch. 511, § 16, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 16, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-533. Penalties for violations of this article.

(1) Any person who knowingly and intentionally possesses, installs, operates or monitors an electronic, mechanical or other device in violation of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to not more than one (1) year in the county jail or fined not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) Any person who violates the provisions of Section 41-29-511 shall be guilty of a felony and, upon conviction thereof, shall be sentenced to not more than five (5) years in the State Penitentiary and fined not more than Ten Thousand Dollars (\$10,000.00).

SOURCES: Laws, 1989, ch. 553, § 17; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 17; Laws, 1995, ch. 520, § 15; reenacted without change, Laws, 2004, ch. 511, § 17, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 17, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state legislation making wiretapping a criminal offense. 74 A.L.R.2d 855.

Misuse of telephone as minor criminal offense. 97 A.L.R.2d 503.

Interception of telecommunication by or with consent of party as exception, under 18 USCS § 2511(2)(c) and (d), to federal proscription of such interceptions. 67 A.L.R. Fed. 429.

§ 41-29-535. Applicability of article.

This article shall not apply to a person who is a subscriber to a telephone operated by a communication common carrier and who intercepts a communication on a telephone to which he subscribes. This article shall not apply to persons who are members of the household of the subscriber who intercept communications on a telephone in the home of the subscriber.

SOURCES: Laws, 1989, ch. 553, § 18; repealed, 1989, ch. 553, § 19; enacted, 1992, ch. 561, § 18; reenacted without change, Laws, 2004, ch. 511, § 18, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 18, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

JUDICIAL DECISIONS**1. In general.**

State law prohibition on wiretapping did not apply to former wife who intercepted communications on her own tele-

phone. *Wright v. Stanley*, 700 So. 2d 274 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

§ 41-29-536. Motions for communication records to aid in investigations of violations of the Uniform Controlled Substances Law.

(1) Attorneys for the Bureau of Narcotics may file a motion with a circuit court judge of the circuit court district in which the subscriber, instrument or other device exists, for communication records which will be material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law.

(2) The motion shall be made in writing, under oath, and shall include the name of the subscriber, the number or numbers, and the location of the instrument or other device, if known and applicable. The motion shall be accompanied by an affidavit from an agent of the Bureau of Narcotics which sets forth facts which the court shall consider in determining that probable cause exists to believe that the information sought will be material to an ongoing felony violation of the Uniform Controlled Substances Law.

(3) Upon consideration of the motion and the determination that probable cause exists, the circuit court judge may order a communications common carrier as defined by 47 USCS 153(h) or a provider of communication services to provide the Bureau of Narcotics with communication billing records, call records, subscriber information, or other communication record information. The communications common carrier or the provider of communication services shall be entitled to compensation at the prevailing rates from the Bureau of Narcotics.

(4) The circuit court judge shall seal each order issued pursuant to this section. The contents of a motion, affidavit and order may not be disclosed except in the course of a judicial proceeding. Any unauthorized disclosure of a sealed order, motion or affidavit shall be punishable as contempt of court.

SOURCES: Laws, 1995, ch. 520, § 18; Laws, 1998, ch. 343, § 3; reenacted without change, Laws, 2004, ch. 511, § 19, eff from and after July 1, 2004.

Editor's Note — This section was reenacted without change by Laws, 2004, ch. 511, § 19, effective from and after July 1, 2004.

Former § 41-29-537, which contained a sunset provision for this section, was repealed by Laws of 2006, ch. 469, effective July 1, 2006.

§ 41-29-537. Repealed.

Repealed by Laws, 2006, ch. 379, § 1 effective from and after passage March 13, 2006.

Repealed by Laws, 2006, ch. 469, § 1 effective from and after July 1, 2006.

Laws, 1995, ch. 520, § 18; Laws, 1998, ch. 343, § 3; reenacted without change, Laws, 2004, ch. 511, § 19, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 1 of ch. 379, Laws of 2006, effective from and after passage (approved March 13, 2006), amended this section. Section 1 of ch. 469, Laws of 2006, effective from and after July 1, 2006 (approved March 23, 2006), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 469, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor's Note — Former § 41-29-537 was entitled: "Repeal of Sections 41-29-501 through 41-29-536."

ARTICLE 9.

PEN REGISTER.

SEC.

41-29-701. Procedures for use of pen register.

§ 41-29-701. Procedures for use of pen register.

(1) As used in this section, the following words and phrases shall have the meanings ascribed to them herein unless the context clearly requires otherwise:

(a) "Pen register" means a mechanical or electronic device that attaches to a telephone line and is capable of recording outgoing numbers dialed from that line and date, time and duration of any incoming communication to that line.

(b) "Trap and trace device" means a device which captures the incoming electronic or other signals which identifies the originating number of an

instrument or device from which a wire or other communication was transmitted.

(c) "Caller ID" means a service offered by a provider of communications services which identifies either or both of the originating number or the subscriber of such number of an instrument or device from which a wire or other communication was transmitted.

(2)(a) Attorneys for the Bureau of Narcotics, upon their own motion, may file an application with the circuit court for the installation and use of a pen register, trap and trace device or caller ID to obtain information material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law. Venue under this section shall be in the circuit court district of any of the following: (i) the county of residence of the subscriber, (ii) the county of residence of the user, (iii) the county in which the billing address is located, or (iv) the county in which the crime is allegedly being committed.

(b) The application shall be made in writing under oath and shall include the name of the subscriber, the telephone number or numbers, and the location of the telephone instrument or instruments upon which the pen register will be utilized. The application shall also set forth facts which the court shall consider in determining that probable cause exists that the installation and utilization of the pen register, trap and trace device or caller ID will be material to an ongoing investigation of a felony violation of the Uniform Controlled Substances Law.

(c) Upon consideration of the application and a determination that probable cause exists, the circuit court judge may order the installation and utilization of the pen register, trap and trace device or caller ID, and in the order the circuit court judge shall direct a communications common carrier, as defined by 47 USCS 153(h), to furnish all information, facilities and technical assistance necessary to facilitate the installation and utilization of the pen register, trap and trace device or caller ID unobtrusively and with a minimum of interference to the services provided by the carrier. The carrier is entitled to compensation at the prevailing rates for the facilities and assistance provided to the Bureau of Narcotics.

(d) An order for the installation and utilization of a pen register, trap and trace device or caller ID is valid for not more than thirty (30) days from the date the order is granted unless, prior to the expiration of the order, an attorney for the Bureau of Narcotics applies for and obtains from the court an extension of the order. The period of extension may not exceed thirty (30) days for each extension granted.

(e) The circuit court shall seal an application and order for the installation and utilization of a pen register, trap and trace device or caller ID granted under this section. The contents of an application or order may not be disclosed except in the course of a judicial proceeding and an unauthorized disclosure is punishable as contempt of court.

(3) On or before January 5 of each year, the Director of the Bureau of Narcotics shall submit a report to the Mississippi Administrative Office of

Courts detailing the number of applications for pen registers sought and the number of orders for the installation and utilization of pen registers, trap and trace devices or caller ID granted during the preceding calendar year.

SOURCES: Laws, 1989, ch. 554, § 1; Laws, 1995, ch. 520, § 17; Laws, 2007, ch. 328, § 1, eff from and after July 1, 2007.

Editor's Note — 47 USCS 153(h) referred to in this section was amended several times since 1989; one significant amendment in 1996 redesignated the paragraphs and reordered them numerically rather than alphabetically; the same amendment also stated that “the terms used in this Act have the meanings provided in Section 3 of the Communications Act of 1934 (47 USCS 153). The term “common carrier” is currently defined in 47 USCS 153 (10).

Amendment Notes — The 2007 amendment in (2)(a), deleted “judge of the circuit court district in which the proposed installation will be made” following “circuit court” in the first sentence, added the last sentence, and made a minor stylistic change.

Cross References — Interception of wire or oral communication, see §§ 41-29-501 et seq.

CHAPTER 30

Alcoholism and Alcohol Abuse Prevention, Control and Treatment

SEC.

- | | |
|-----------|---|
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| 41-30-29. | Supplemental nature of provisions for emergency involuntary commitment. |
| 41-30-31. | Involuntary commitment exceeding five days. |
| 41-30-33. | Confidentiality of records; conditions for disclosure. |
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§ 41-30-1. Title.

This chapter shall be cited as the "Comprehensive Alcoholism and Alcohol Abuse Prevention, Control and Treatment Act of 1974."

SOURCES: Laws, 1974, ch. 562, § 1, eff from and after July 1, 1974.

Cross References — Drug Courts, see §§ 9-23-1 et seq.

Involuntary commitment of alcoholics and drug addicts to private treatment facilities, see §§ 41-32-1 et seq.

Participation in a drug identification program, see §§ 47-5-601 et seq.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

There is no indication that Sections 41-30-1 et seq. and Sections 41-21-61 et seq. are in anyway interchangeable and to admit or commit individual under mis-

taken statutory provision is denial of due process rights. Presley, March 3, 1994, A.G. Op. #93-0999.

§ 41-30-3. Definitions.

For purposes of this chapter, the following words shall have the definition ascribed herein unless the context otherwise requires:

(a) "Board" shall mean the Mississippi State Board of Health, or in the event the 1974 Regular Session shall enact House Bill 411 and thereby, upon approval by the governor, create a board of mental health, the term "board" shall then mean such board of mental health.

(b) "Division" shall mean the division of alcohol and drug misuse.

(c) "Director" shall mean the director of the division of alcohol and drug misuse.

(d) "Advisory council" shall mean the Mississippi Advisory Committee on Alcohol Abuse and Alcoholism of the advisory council on comprehensive health planning of the office of the governor.

(e) "Consortium" shall mean the University Consortium on Alcohol Abuse and Alcoholism.

(f) "State hospitals" shall mean the Mississippi State Hospital at Whitfield and the East Mississippi State Hospital at Meridian.

(g) "Alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(h) "Approved private treatment facility" shall mean any private facility, service or program approved by the division providing treatment or rehabilitation services for alcoholics including, but not limited to, detoxication centers, licensed hospitals, community or regional mental health facilities, clinics or programs, halfway houses, and rehabilitation centers.

(i) "Approved public treatment facility" shall mean any center, facility, service or program approved by the division owned and operated or sponsored and operated by any federal, state or local governmental entity and which provides treatment and rehabilitation services for alcoholics.

(j) "Intoxicated person" shall mean a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

SOURCES: Laws, 1974, ch. 562, § 2, eff from and after July 1, 1974.

Editor's Note — House Bill 411, referred to in this section, was enacted as Chapter 567, Laws of 1974, effective from and after April 23, 1974. See, in this regard, §§ 41-4-1 et seq.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-5. Division of alcohol and drug misuse; qualifications of director.

There is hereby created a division of alcohol and drug misuse within the Mississippi State Board of Health or, if the 1974 Regular Session shall enact

House Bill 411 and thereby, upon approval by the governor, create a board of mental health or department of mental health, then the division shall be created in such board or department of mental health which shall have as its chief administrative officer the director of the division of alcohol and drug misuse. The director shall be selected by the executive officer of the board and shall receive such compensation as established by the board. The director shall have an advanced academic degree along with experience and training in an area of study providing knowledge of medical-social problems including alcoholism or the organization or administration of treatment services for persons suffering from medical-social problems including alcoholism.

SOURCES: Laws, 1974, ch. 562, § 3, eff from and after July 1, 1974.

Editor's Note — House Bill 411, referred to in this section, was enacted as Chapter 567, Laws of 1974, effective from and after April 23, 1974. See, in this regard, §§ 41-4-1 et seq.

Cross References — Inclusion of the division of alcohol and drug misuse in the state department of mental health, see § 41-4-5.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-7. General duties of division.

The division shall have the following duties:

(a) To formulate, develop and implement a statewide plan for the prevention and detection of alcohol abuse and alcoholism, and the care, treatment and rehabilitation of alcohol abusers and alcoholics. The division shall also implement the statewide plan through approved public and private treatment facilities including regional and community mental health facilities, local public and private hospitals, halfway houses, and other local entities or facilities presently providing such care, treatment and rehabilitation or which may be suitable for use in providing the same.

(b) To coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of alcoholism and treatment and rehabilitation of alcoholics. The division shall also serve as a clearinghouse for information relating to alcoholism, and shall prepare, publish and disseminate information and educational material concerning the nature and effects of alcohol and the scope of the alcoholism problem in Mississippi.

(c) To foster and encourage regional, local and community plans and programs in the detection and prevention of alcohol abuse and alcoholism and in the treatment and rehabilitation of alcoholics. Such programs may be implemented through approved public and private treatment facilities including regional, local or community facilities, and shall be part of or coordinated with the statewide plan.

(d) To cooperate with the governing authority and directors of state hospitals in formulating and implementing the statewide plan so as to utilize facilities at state hospitals only when absolutely necessary.

(e) To cooperate with the state penitentiary board, the federal government, the probation and parole board, and other agencies having law enforcement and corrections responsibilities in establishing and conducting treatment and rehabilitation programs for alcoholics or intoxicated persons who, after conviction, are incarcerated in or on parole from correctional institutions.

(f) To cooperate with all law enforcement authorities, the office of the governor, and conservators of the peace in conducting education, treatment and rehabilitation programs for individuals arrested for alcohol-related offenses involving motor vehicles.

(g) To cooperate with the division of instruction of the state department of education, the University Consortium on Alcohol Abuse and Alcoholism, schools, law enforcement agencies, courts, and other public and private agencies, organizations and individuals in providing educational programs regarding alcohol and alcoholism, and in providing educational materials therefor.

(h) To cooperate with the University Consortium on Alcohol Abuse and Alcoholism in conducting research into the nature and effects of alcohol, the nature and scope of the alcohol abuse problem in Mississippi, the causes of alcoholism, and such other areas as the division deems proper.

(i) To cooperate with the University Consortium on Alcohol Abuse and Alcoholism in providing training for all individuals engaged in the identification, treatment and rehabilitation of alcoholics, including the alcohol and drug education specialists of the public schools of this state.

(j) To establish methods for the retention of statistical information by public and private agencies, organizations and individuals regarding medical, psychological and vocational treatment and rehabilitation for alcoholics, alcohol-related criminal violations, the effects of alcohol abuse upon the labor force and economy of this state, and such other areas as the division deems proper.

(k) To assist in the preparation of alcohol-related health, welfare and treatment plans and applications for grants to be submitted by a state or local agency to the federal government pursuant to the requirements of federal law.

(l) To encourage all public and private health, hospitalization, sickness and disability insurance programs to include coverage for alcoholism.

(m) To encourage and assist businesses and industries in formulating and implementing alcohol abuse identification and rehabilitation programs.

(n) To serve as the single state agency and alcoholism authority of the State of Mississippi pursuant to the provisions of the Community Mental Health Centers Amendments of 1968 (PL 90-574) and 1970 (PL 91-211) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616).

SOURCES: Laws, 1974, ch. 562, § 4, eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

Federal Aspects — Provisions of the Community Mental Health Centers, as amended by P.L. 90-574 and P.L. 91-211, and appearing generally as 42 USCS §§ 2661 et seq., have been omitted, repealed or transferred.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 appears generally as 42 USCS §§ 4541 et seq.

§ 41-30-9. Statewide plan; services and facilities to be included.

(1) The division shall establish a comprehensive statewide plan for the identification of alcohol abuse and treatment and rehabilitation of alcoholics and intoxicated persons. The statewide plan shall include a variety of treatment methods, and shall provide or arrange for a variety of approved treatment facilities so that the needs of persons suffering from alcoholism, and of persons who are intoxicated and in need of emergency medical aid, may be fully met.

(2) The division in implementing the statewide plan shall utilize to the fullest extent possible the facilities of regional or community mental health facilities presently existing or to be established hereafter along with any facility or program of a county, municipality or private organization. The division shall coordinate implementation of its statewide plan with existing or planned programs of regional and local public and private organizations.

(3) The statewide plan of the division shall include, but need not be limited to, the following public or private treatment services and facilities:

(a) Emergency medical-social services and facilities to render emergency medical care including detoxication and emergency social services. Such facilities and services shall provide for the immediate physical and social needs including the needs for medication and shelter of intoxicated persons, and shall also provide for initial examination, diagnosis and referral. Each such facility or service shall be affiliated with or constitute a part of the general medical service of a licensed hospital or other medical facility, but need not be physically a part of such hospital or facility.

(b) Out-patient facilities, including but not limited to clinics, vocational rehabilitation services and community mental health facilities.

(c) Intermediate care services, including but not limited to partial hospitalization and supportive residential facilities such as halfway houses, nursing homes, nursing care facilities and community mental health facilities. The intermediate care facilities may be operated by or may be jointly operated with state or local, public or private agencies approved by the division.

(d) In-patient short term or extended care facilities for diagnostic study, intensive study, treatment and rehabilitation of alcoholics, which may be part of public or private licensed hospitals, mental hospitals or community mental health facilities, and may be provided to inmates of any correctional facility.

(e) After-care services for patients.

SOURCES: Laws, 1974, ch. 562, § 5(1-3), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-11. Statewide plan; use of local and private facilities; acceptance and expenditures of gifts, grants, etc.

The division, subject to applicable provisions of law, may arrange for the use of local and private treatment facilities on a cooperative basis by contractual, cost-sharing, or other method of joint or shared support whenever the director, subject to the policies of the board, considers this to be the most effective and economical course to follow. Authority is granted to the division to accept, receive, administer and expend any moneys or materials, gifts or grants from whatever source, and to contract for services with or make grants to any governmental units, agencies or departments, federal, state or local, and any treatment resource having available approved treatment, rehabilitation or educational services relating to alcoholism, but this chapter shall not affect the right of any institution under the jurisdiction of the board of trustees of mental institutions to apply for, receive or expend federal funds.

SOURCES: Laws, 1974, ch. 562, § 5(4), eff from and after July 1, 1974.

Editor's Note — The board of trustees of mental institutions has been abolished and its duties, responsibilities and authority is vested in the state board of mental health. See § 41-4-11.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-13. Statewide plan; approval or certification of facilities.

The division shall approve or certify all private and public treatment facilities as an approved facility under the statewide plan before such facility shall be eligible to receive any funds to which it may be entitled under the provisions of this chapter. Such approved status shall be valid for one (1) calendar year, and each facility shall apply for a renewal of its approved status within thirty (30) days before the date of expiration of the approved status.

SOURCES: Laws, 1974, ch. 562, § 5(5), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-15. Rules and regulations.

The division shall adopt, amend, promulgate and enforce such rules and regulations as may be deemed necessary to carry out the purposes of this chapter, including those criteria for approved facilities.

SOURCES: Laws, 1974, ch. 562, § 6(1), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-17. Inspections.

The division shall periodically inspect all approved facilities at reasonable times and in a reasonable manner.

SOURCES: Laws, 1974, ch. 562, § 6(2), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-19. Treatment of public intoxicated offenders in lieu of execution of sentence.

The judge of any court, before whom appears an individual charged with a second or subsequent offense of public intoxication, may, upon a plea of guilty or conviction suspend execution of sentence and require the offender to participate in and complete a prescribed course of alcohol abuse treatment and rehabilitation. The judge shall consult with the division to determine the course of treatment best suited to the needs of the convicted person. The convicted person while participating in the course of treatment shall not be considered committed, civilly or criminally, as otherwise provided by law for commitment to any institution; provided that no judge may require in-patient care for a period in excess of ninety (90) days. Upon completion of the course of treatment prescribed by the judge, the sentence shall not be executed. The convicted person, if financially able, shall be responsible for defraying any cost of the prescribed course of treatment.

SOURCES: Laws, 1974, ch. 562, § 7, eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

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| ALR. Location of offense as "public" within requirement of enactments against drunkenness. 8 A.L.R.3d 930. | Prosecution of chronic alcoholic for drunkenness offenses. 40 A.L.R.3d 321. |
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§ 41-30-21. Voluntary submission to treatment for alcoholism or drug dependency; application.

Any person may voluntarily apply for treatment for alcoholism, drug addiction, substance dependency or drug dependency, directly to any approved public or private treatment facility. If the patient is a minor or an incompetent, the application for voluntary inpatient, intermediate, or outpatient treatment,

and the request for discharge from an inpatient institution, shall be made by his parent, legal guardian, or other representative.

SOURCES: Laws, 1974, ch. 562, § 8(1), eff from and after July 1, 1974.

Cross References — Guardians for drunkards, generally, see §§ 93-13-131, 93-13-133.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-23. Voluntary submission to treatment; admission and duration of in-patient treatment.

The administrator in charge of any approved public or private in-patient, out-patient, or intermediate facility, subject to the rules and regulations established by the division, may determine who shall be admitted for treatment; provided no person shall be retained by the treatment facility upon voluntary commitment on an in-patient basis for a period in excess of thirty (30) days.

SOURCES: Laws, 1974, ch. 562, § 8(2), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-25. After-care treatment and assistance.

Upon his discharge from, or upon leaving, an approved public or private treatment facility, a patient shall be encouraged to consent to appropriate out-patient, intermediate care, or other after-care treatment. If it appears to the administrator in charge of the treatment facility, upon the advice of the attending physician, that the patient is an alcoholic who requires such help, the division may arrange for assistance in obtaining supportive services and residential facilities, such as maintenance in a hotel or halfway house operated by the division or by any other public or private agency.

SOURCES: Laws, 1974, ch. 562, § 8(3), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-27. Emergency involuntary commitment; alcoholics; drug addicts.

(1)(a) A person may be admitted to an approved public or private treatment facility for emergency care and treatment upon a decree of the chancery court accepting an application for admission thereto accompanied by the certificate of two (2) licensed physicians. The application shall be to the chancery court of the county of such person's residence and may be made

by any one (1) of the following: Either certifying physician, the patient's spouse or guardian, any relative of the patient, or any other person responsible for health, safety or welfare of all or part of the citizens within said chancery court's territorial jurisdiction. The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has threatened, attempted or actually inflicted physical harm upon himself or another. The physicians' certificates shall state that they examined the person within two (2) days of the certificate date and shall set out the facts to support the physicians' conclusion that the person is an alcoholic or drug addict who has lost the power of self-control with respect to the use of alcoholic beverages or habit-forming drugs and that unless immediately committed he is likely to inflict physical harm upon himself or others. A hearing on such applications shall be heard by the chancery court in term time or in vacation, and the hearing shall be held in the presence of the person sought to be admitted unless he fail or refuse to attend. Notice of the hearing shall be given to the person sought to be admitted, as soon as practicable after the examination by the certifying physicians, and the person sought to be admitted shall have an opportunity to be represented by counsel, and shall be entitled to have compulsory process for the attendance of witnesses.

(b) For the purpose of this section, the term "drug addict" shall have the meaning ascribed to it by Section 41-31-1(d).

(2) The chancery judge may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application after hearing thereon and decree sustaining the application by the judge, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than five (5) days.

(4) The application filed pursuant to subsection (1) of this section shall also contain a petition for involuntary commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972. If the application for emergency involuntary commitment is accepted under subsection (2) of this section, the chancery judge shall order a hearing on the petition for commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972, to be held on the fifth day of such involuntary emergency commitment, the provisions of Section 41-31-5 regarding the time of hearing to the contrary notwithstanding; provided, however, that at the time of such involuntary commitment the alleged alcoholic or drug addict shall be served with a citation to appear at said hearing and shall have an opportunity to be represented by counsel.

SOURCES: Laws, 1974, ch. 562, § 9; Laws, 1983, ch. 335, eff from and after passage (approved March 14, 1983).

Cross References — Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq.

Provisions of subsections (3) and (4) of this section are supplemental and in addition to the provisions of Chapter 31 of Title 41, which pertain to the commitment of alcoholics, see § 41-30-29.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 17 et seq. (affidavit — of alcoholism — to accompany petition for hearing to determine competency of alleged incompetent).

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-30-29. Supplemental nature of provisions for emergency involuntary commitment.

The provisions of subsections (3) and (4) of Section 41-30-27 shall be supplemental and in addition to the provisions of Title 41, Chapter 31, Mississippi Code of 1972, which pertain to commitment of alcoholics.

SOURCES: Laws, 1974, ch. 562, § 10(1), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-31. Involuntary commitment exceeding five days.

Involuntary commitment of an individual to an approved public or private treatment facility for treatment or rehabilitation for a period in excess of five (5) days shall be according to the provisions of Title 41, Chapter 31, Mississippi Code of 1972.

SOURCES: Laws, 1974, ch. 562, § 10(2), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-33. Confidentiality of records; conditions for disclosure.

(1) The registration and other records of services by approved treatment facilities, whether in-patient, intermediate or out-patient, authorized by this

chapter, shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any proceeding held pursuant to Title 41, Chapter 31, Mississippi Code of 1972. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

SOURCES: Laws, 1974, ch. 562, § 11, eff from and after July 1, 1974.

Cross References — Confidentiality of records in the commitment of alcoholics, see § 41-31-17.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

ATTORNEY GENERAL OPINIONS

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public

Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

§ 41-30-35. Charge against person treated and his estate.

Reasonable charges and expenses for the care, maintenance and treatment of alcoholics in any approved public treatment facility under any provision of this chapter shall be a lawful charge against the person and estate of said alcoholic.

SOURCES: Laws, 1974, ch. 562, § 12(1), eff from and after July 1, 1974.

Cross References — Costs of commitment and support of alcoholics, see § 41-31-15.

Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms seq. (expenses of support and treatment of (Rev), Incompetent Persons, Forms 201 et incompetent).

§ 41-30-37. Right of private facility to payment for services.

Notwithstanding anything to the contrary in this chapter, no approved private treatment facility, whether an out-patient or an in-patient unit, shall be required to accept any person for treatment through commitment proceed-

ings or otherwise, unless adequate arrangements for payment of the cost of such services are made, whether paid by the patient or by the state.

SOURCES: Laws, 1974, ch. 562, § 12(2), eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

§ 41-30-39. Advisory council to division.

The advisory committee on alcohol abuse and alcoholism of the advisory council on comprehensive health planning of the office of the governor shall serve as advisory council to the division for the purpose of consulting with and advising the division in carrying out the provisions of this chapter, and for purposes of compliance with any requirements or conditions for receipt of federal funds under federal law.

SOURCES: Laws, 1974, ch. 562, § 13, eff from and after July 1, 1974.

Cross References — Proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts, see Miss. R. Civ. P. 81.

CHAPTER 31

Commitment of Alcoholics and Drug Addicts for Treatment

SEC.

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| 41-31-1. | Definitions. |
| 41-31-3. | Petition for detention, care and treatment. |
| 41-31-5. | Proceeding on petition. |
| 41-31-7. | Appeals. |
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| 41-31-13. | Probation and discharge. |
| 41-31-15. | Costs of commitment and support. |
| 41-31-17. | Rights as citizens; confidentiality of records. |
| 41-31-19. | Commitment proceedings for persons with mental illness committed under this chapter. |
| 41-31-21. | Refusal of admittance to certain persons. |
| 41-31-23. | Providing alcoholic beverages to persons in custody of institution. |

§ 41-31-1. Definitions.

As used in this chapter, the following words and phrases shall have the meaning hereinafter ascribed to them, unless the context requires a different meaning, to-wit:

(a) An "alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholic beverage" shall mean and include alcoholic spirits, liquors, wines, beer, and every liquid or fluid, patented or not, containing alcoholic spirits, wine or beer, which is capable of being consumed by human beings and produces or results in intoxication in any form or degree.

(c) "Alcoholism" shall mean any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(d) A "drug addict" shall mean any person who chronically and habitually uses any form of habit-forming drugs, such as opiates and the derivatives thereof, barbiturates, and every tablet, powder, substance, liquid or fluid, patented or not, containing habit-forming drugs if same is capable of being used by human beings and produces drug addiction in any form or degree.

(e) "Drug addiction" shall mean and include any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of habit-forming drugs.

(f) "Hospital" or "institution" shall mean either the Mississippi State Hospital, at Whitfield, Mississippi, or the East Mississippi State Hospital, at Meridian, Mississippi, and shall include the grounds thereof and the facilities used for the treatment of alcoholics and the drug addicts.

(g) "Medical director" shall mean the physician in charge of said Mississippi State Hospital or East Mississippi State Hospital, as the case may be.

SOURCES: Codes, 1942, § 436-01; Laws, 1950, ch. 349, § 1.

Cross References — Drug Courts, see §§ 9-23-1 et seq.

Establishment and functions of the state board of mental health and the state department of mental health in connection with services provided for alcoholics and drug dependent persons, see §§ 41-4-1 et seq.

State mental institutions, see §§ 41-17-1 et seq.

Commitment of persons in need of mental treatment, see §§ 41-21-61 et seq.

Regulation of drugs, narcotics and poisons, see §§ 41-29-1 et seq.

Statewide plan of detection and treatment of alcoholics, see §§ 41-30-1 et seq.

Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

Involuntary commitment of alcoholics and drug addicts to private treatment facilities, see §§ 41-32-1 et seq.

Participation in a drug identification program, see §§ 47-5-501 et seq.

Coverage of alcoholism care and treatment in accident or sickness insurance policy, see §§ 83-9-27 et seq.

Guardians for drunkards and drug addicts, generally, see §§ 93-13-131, 93-13-133.

ATTORNEY GENERAL OPINIONS

The department of public safety of a community hospital does not have authority to issue traffic citations on the public streets surrounding the hospital or to per-

sons operating a motor vehicle on the hospital's premises. Castle, Nov. 14, 2005, A.G. Op. 05-0498.

RESEARCH REFERENCES

ALR. Validity and construction of statutes providing for civil commitment of arrested narcotic addicts. 98 A.L.R.2d 726.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 259 et seq.

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 2 (identification of substance as a drug through testimony of expert).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS. 14 C.J.S., Chemical Dependents §§ 3, 13 et seq.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-31-3. Petition for detention, care and treatment.

Proceedings for detention, care and treatment of any person alleged to be an alcoholic or drug addict may be initiated or instituted by such person's husband, wife, child, mother, father, next of kin, or by any friend or relative thereof, or by the county health officer. Such proceedings shall be instituted by the filing of a sworn petition or application in the chancery court of the county

of such person's residence or of the county in which he may be found. It shall be necessary that said petition allege that such person is an alcoholic or drug addict, as the case may be, is a resident citizen of this state, and because of his alcoholism or drug addiction is incapable of or unfit to look after and conduct his affairs, or is dangerous to himself or others, or has lost the power of self-control because of periodic, constant or frequent use of alcoholic beverages or habit-forming drugs, and that he is in need of care and treatment, and that his detention, care and treatment at an institution will improve his health. All proceedings authorized by this chapter may be had and conducted either in termtime or in vacation of said court.

SOURCES: Codes, 1942, § 436-02; Laws, 1950, ch. 349, § 2; Laws, 1976, ch. 401, § 7, eff from and after July 1, 1976.

Cross References — Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

RESEARCH REFERENCES

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| <p>Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 259 et seq.</p> <p>14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 17 et seq. (affidavit — of alcoholism — to accompany petition</p> | <p>for hearing to determine competency of alleged incompetent).</p> <p>CJS. 14 C.J.S., Chemical Dependents §§ 3, 13 et seq.</p> |
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§ 41-31-5. Proceeding on petition.

Whenever such a petition shall be filed the chancellor of said court shall, by order, fix a time upon a day certain for the hearing thereof, either in termtime or in vacation, which hearing shall be fixed not less than five (5) days nor more than twenty (20) days from the filing of said petition. The person alleged to be an alcoholic or drug addict shall be served with a citation to appear at said hearing not less than three (3) days prior to the day fixed for said hearing, and there shall be served with such citation a true and correct copy of said petition. At the time fixed, the chancellor shall hear evidence on said petition, with or without the presence of the alleged alcoholic or drug addict, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of said petition. The said chancellor, in his discretion, may require that the alleged alcoholic or drug addict be examined by the county health officer or by such other competent physician or physicians as the chancellor may select, and may consider the results of such examination in reaching a decision in said matter. If the alleged alcoholic or drug addict shall admit the truth and correctness of the allegations of said petition, or if the chancellor should find from the evidence that such person is an alcoholic or drug addict, and is in need of detention, care and treatment in an institution, and that the other material allegations of said petition are true, then he shall enter an order so finding, and shall order that such person be remanded and committed to and confined in the proper state institution or in the case of an alcoholic to an approved public or

private treatment facility pursuant to the provisions of Chapter 30 of Title 41, Mississippi Code of 1972, for care and treatment for a period of not less than thirty (30) days nor more than ninety (90) days as the necessity of the case may, in his discretion, require. However, when such person shall be so committed, the medical director of the said institution shall be vested with full discretion as to the treatment and discharge of such person, and may discharge and release such person at any time when the condition of such person shall so justify.

SOURCES: Codes, 1942, § 436-03; Laws, 1950, ch. 349, § 3; Laws, 1974, ch. 562, § 14, eff from and after July 1, 1974.

Cross References — Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

RESEARCH REFERENCES

Am Jur. 16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

§ 41-31-7. Appeals.

Any person who shall be ordered to be committed to an institution as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, which said bond shall be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

SOURCES: Codes, 1942, § 436-04; Laws, 1950, ch. 349, § 4.

§ 41-31-9. Enforcement of orders.

The chancellor shall have the power to order the issuance of such writs and other process as may be necessary to enforce his orders in such matters, including writs directed to the sheriff of any proper county to take such person into custody and to deliver him to the director of the proper institution. Such writs and other process shall be issued and executed accordingly.

SOURCES: Codes, 1942, § 436-05; Laws, 1950, ch. 349, § 5.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Form 161 et seq. (warrant — for commitment).

§ 41-31-11. Transferring of patients.

The medical director of the Mississippi State Hospital or the East Mississippi State Hospital may, subject to the regulations of the board of trustees of mental institutions, transfer alcoholics or drug addicts from one institution used for the commitment of alcoholics and drug addicts to another institution, or from one department in any institution to another as is deemed necessary for their care and treatment.

SOURCES: Codes, 1942, § 436-06; Laws, 1950, ch. 349, § 6.

§ 41-31-13. Probation and discharge.

Any person committed to the custody of the Mississippi State Hospital or the East Mississippi Hospital may, notwithstanding the terms of any order of commitment, be permitted by the medical director or his authorized agent, to go at large on probation and without custody or restraint for such time and under such conditions as such medical director shall judge best. All persons committed to the custody of the Mississippi State Hospital or the East Mississippi State Hospital may be discharged by the director pursuant to its regulations, notwithstanding the terms of any order of commitment.

SOURCES: Codes, 1942, § 436-07; Laws, 1950, ch. 349, § 7.

RESEARCH REFERENCES

CJS. 14 C.J.S., Chemical Dependents §§ 3, 30.

§ 41-31-15. Costs of commitment and support.

The provisions of the law with respect to the costs of commitment and the cost of support, including methods of determination of persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the state to secure reimbursement of any such items of cost, applicable to the commitment to and support of the mentally ill persons in state hospitals, shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of any person committed to the state hospitals and maintained in any institution or hospital operated by the State of Mississippi under the provisions of this chapter.

SOURCES: Codes, 1942, § 436-08; Laws, 1950, ch. 349, § 8.

Cross References — Cost of treatment of an alcoholic as a charge against his person and estate, see § 41-30-35.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 259 et seq.
 14 Am. Jur. Pl & Pr Forms (Rev), Incompetent Persons, Forms 201 et seq. (expenses of support and treatment of incompetent).
CJS. 14 C.J.S., Chemical Dependents §§ 3, 13 et seq.

§ 41-31-17. Rights as citizens; confidentiality of records.

No person who is committed to the Mississippi State Hospital or the East Mississippi State Hospital for treatment under the provisions of this chapter shall forfeit or be abridged thereby of any of his or her rights as a citizen of the United States or of the State of Mississippi. The records pertaining to any person committed to the Mississippi State Hospital or the East Mississippi State Hospital for treatment, care, guidance and rehabilitation shall be confidential, and the contents thereof shall not be divulged except on an order of a court of competent jurisdiction or a signed waiver by the person committed. However, information in regard to cancer about any such patients who might have cancer shall be provided to the state board of health as the official tumor registry agency, which information shall be used to provide statistical reports only. The agency shall not divulge any patient's name in regard to any case history nor statistical compilation.

SOURCES: Codes, 1942, § 436-09; Laws, 1950, ch. 349, § 9; Laws, 1968, ch. 441, § 5, eff from and after passage (approved July 17, 1968).

Editor's Note — Former § 41-3-23, which designated the State Board of Health as the tumor registry agency of the state, was repealed by Laws of 1982, ch. 494, § 1, effective from and after July 1, 1982.

Cross References — Emergency involuntary commitment of an alcoholic or drug addict, see § 41-30-27.

Confidentiality of records under statewide plan for detection and treatment of alcoholics, see § 41-30-33.

ATTORNEY GENERAL OPINIONS

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

§ 41-31-19. Commitment proceedings for persons with mental illness committed under this chapter.

The medical director of the hospital may bring commitment proceedings under the provisions of the proper statute in the county wherein the person involved is restrained for commitment to such institution as shall be proper, if

said person is found to be suffering from a mental or nervous condition or affliction requiring his adjudication and commitment under said statute.

SOURCES: Codes, 1492, § 436-10; Laws, 1950, ch. 349, § 10.

Cross References — State mental institutions, see §§ 41-17-1 et seq.
Commitment of persons in need of mental treatment, see §§ 41-21-61 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and **CJS.** 14 C.J.S., Chemical Dependents
Controlled Substances §§ 259 et seq. §§ 3, 13 et seq.

§ 41-31-21. Refusal of admittance to certain persons.

If in the opinion of the medical director of the Mississippi State Hospital or the East Mississippi State Hospital, any person willfully and consistently fails to be rehabilitated after three commitments to any state institution, said medical director may refuse further admission to such person notwithstanding the order of any court, unless such person on the fourth or any succeeding commitment be committed by an order of the chancery court as provided by this chapter, and before entering said institution on a fourth or any succeeding commitment, such person, or someone for such person committed, shall pay to said institution the sum of fifty dollars (\$50.00) per month in advance for the care, custody, support and maintenance of such person in said institution.

Such person, or someone for such person, failing or refusing to make the payment herein provided, before admission on a fourth or succeeding commitment, or any time during said commitment, shall be cause for the medical director of such institution to refuse admission of such person committed under this chapter, or to dismiss such person committed under this chapter after commitment.

The monthly payment herein provided shall be a condition precedent to admission of a person on a fourth or subsequent commitment, and shall be made each month thereafter in advance on or before the last day of the preceding month for which payment is due.

There shall be no refunds of the monthly payment herein provided on account of such person committed hereunder having failed to remain a full month at such institution.

SOURCES: Codes, 1492, § 436-11; Laws, 1950, ch. 349, § 11; Laws, 1954, ch. 231.

RESEARCH REFERENCES

CJS. 14 C.J.S., Chemical Dependents
§§ 3, 10 et seq.

§ 41-31-23. Providing alcoholic beverages to persons in custody of institution.

Any person who shall give, sell, deliver, or otherwise provide any alcoholic beverages or drug, regardless of the quantity thereof, to any person who is confined in an institution or hospital for care and treatment under this chapter for alcoholism or drug addiction shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment in the discretion of the court. However, the staff of such institution or hospital may administer alcohol or drugs in the course of treatment in strict accordance with the prescriptions of a physician of such institution.

SOURCES: Codes, 1942, § 436-12; Laws, 1950, ch. 349, § 12.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Physician's liability to third person for prescribing drug to known drug addict. 42 A.L.R.4th 586.

CHAPTER 32

Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities

SEC.

- 41-32-1. Scope of chapter; involuntary commitment upon judgment of chancery court.
- 41-32-3. Complaint.
- 41-32-5. Hearing; order for commitment; period of confinement.
- 41-32-7. Earlier hearing for defendant who could flee jurisdiction or cause physical harm; interim commitment.
- 41-32-9. Appeal of commitment decision.
- 41-32-11. Assistance of county sheriff in confining and transporting defendant.

§ 41-32-1. Scope of chapter; involuntary commitment upon judgment of chancery court.

The provisions of this chapter shall be supplemental to the provision of Title 41, Chapters 30 and 31, Mississippi Code of 1972. A person may be involuntarily committed for alcoholism or drug addiction, or both, to a private treatment facility, upon a judgment of the chancery court of the county of such person's residence, or in the county where such person may be found.

SOURCES: Laws, 1983, ch. 456, § 1, eff from and after July 1, 1983.

Cross References — Drug Courts, see §§ 9-23-1 et seq.

ATTORNEY GENERAL OPINIONS

Fee in alcohol/drug commitment proceedings is \$75. Jones Nov. 10, 1993, A.G. Op. #93-0514.

RESEARCH REFERENCES

ALR. Validity and construction of statutes providing for civil commitment of arrested narcotic addicts. 98 A.L.R.2d 726.

Civil liability for physical measures undertaken in connection with treatment of mentally disordered patient. 8 A.L.R.4th, 464.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 259 et seq.

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 2 (identification of substance as a drug through testimony of expert).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS. 14 C.J.S., Chemical Dependents §§ 3, 13 et seq.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Ju-

isdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-3. Complaint.

Any interested person may file a complaint with the chancery court for a judgment of committal in termtime or in vacation. The complaint shall state facts to establish: (a) the defendant is an alcoholic or drug addict, i.e., he is powerless over alcohol or drugs, or both, and his life has thereby become unmanageable; (b) defendant's mental and physical health, his continued family life or his position in the community are dependent on his treatment at a chemical dependency unit, alcohol and drug unit, outpatient house or another private treatment facility, or combination of facilities, providing treatment for chemically dependent persons; (c) the defendant has refused to commit himself to such private treatment facility, though having been requested so to do by persons who genuinely care for his well-being; (d) the complainant has selected a particular private treatment facility which, if located in this state, has been approved by the department of mental health, division of alcohol and drug abuse; (e) the complainant has made adequate financial arrangements for defendant's treatment at such facility; and (f) such facility has approved the admission of the defendant, subject to commitment by the chancery court.

SOURCES: Laws, 1983, ch. 456, § 2, eff from and after July 1, 1983.

§ 41-32-5. Hearing; order for commitment; period of confinement.

The chancellor shall schedule with the complainant a time on a day certain for the hearing thereof, not less than five (5) days nor more than twenty (20) days from the filing of the complaint. The case shall be triable upon three (3) days' service of process and service of notice of the time for the hearing. At the time fixed, the chancellor shall hear the evidence in the presence of the defendant if he will appear, and without the presence of the defendant if he will not appear, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the complaint. If the defendant admits the truth and correctness of the allegations of the complaint, or if the chancellor shall find from the evidence that the defendant is an alcoholic or drug addict, or both, and is in need of detention, care and treatment in a private treatment facility, and that the other material allegations of the complaint are true, then the chancellor shall enter a judgment so finding, and shall order that such person be committed to and confined in a chemical dependency unit, alcohol and drug unit, outpatient house or any other private treatment facility, within or outside the state, for the treatment of chemically dependent persons, as the chancellor, in his discretion, deems to be in the best interest of the defendant. Any such order for the commitment of the defendant shall require that the defendant be committed for such period of time as the chancellor shall determine, in his discretion,

as is necessary to provide for the care and treatment of the defendant or for such other period of time as may be established by authorized personnel at the designated facility or facilities; provided, however, in no event shall such period of confinement extend beyond a period of eight (8) months. The chancellor may require treatment at a combination of facilities or may designate commitment at an inpatient facility for not more than two (2) months and an outpatient facility for not more than six (6) months, subject to institutional earlier release.

SOURCES: Laws, 1983, ch. 456, § 3, eff from and after July 1, 1983.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 259 et seq.

1 Am. Jur. Proof of Facts, Alcoholism, Proof No. 1 (testimony of physician).

4 Am. Jur. Proof of Facts, Drugs, Proof No. 1 (use of drugs other than that called for in prescription).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No. 1 (illegal possession or use of drug).

13 Am. Jur. Proof of Facts, Criminal Drug Addiction and Possession, Proof No.

2 (identification of substance as a drug through testimony of expert).

16 Am. Jur. Proof of Facts, Alcoholism, § 53 (commitment of the alcoholic).

CJS. 14 C.J.S., Chemical Dependents §§ 3, 13 et seq.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-7. Earlier hearing for defendant who could flee jurisdiction or cause physical harm; interim commitment.

Upon allegation in the complaint and upon clear and convincing proof that the defendant is under the influence of alcohol or drugs, or both, to the extent that if the defendant is served with process he will, in all likelihood, flee the jurisdiction of the court or physically harm himself or others, then the chancellor may, in his discretion, set the matter for hearing not more than five (5) days, excluding Saturdays, Sundays and legal holidays, from the filing of the complaint, and order the defendant committed and confined, without notice, until the hearing, to a chemical dependency unit, alcohol and drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons.

SOURCES: Laws, 1983, ch. 456, § 4, eff from and after July 1, 1983.

Cross References — Emergency involuntary commitment of alcoholic at approved public or private facility, see § 41-30-27.

RESEARCH REFERENCES

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Ju-

risdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March 1982.

§ 41-32-9. Appeal of commitment decision.

Any person who shall be ordered to be committed to a private treatment facility as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, such bond to be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

SOURCES: Laws, 1983, ch. 456, § 5, eff from and after July 1, 1983.

JUDICIAL DECISIONS**1. In general.**

Chancery Court did not abuse its discretion in denying stay, pending appeal, of order that individual surrender himself to center for treatment of alcoholism, be-

cause matters of stay or supersedeas and conditions thereof are discretionary with Chancery Court when appeal is taken under this section. *McIntire v. Moore*, 512 So. 2d 687 (Miss. 1987).

§ 41-32-11. Assistance of county sheriff in confining and transporting defendant.

The chancellor may order assistance by the sheriff of the county, or any other county in confining and transporting the defendant to the facility, at the expense of complainant.

SOURCES: Laws, 1983, ch. 456, § 6, eff from and after July 1, 1983.

CHAPTER 33

Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium

SEC.

- 41-33-1. "Active tuberculosis" defined.
- 41-33-3. Compulsory commitment of active tuberculosis cases to hospital.
- 41-33-5. Request for approval of court action for commitment.
- 41-33-7. Affidavit and hearing in chancery court.
- 41-33-9. Order of commitment to hospital.
- 41-33-11. Discharge from hospital.
- 41-33-13. Cost of hospital care.
- 41-33-15. Submission to medical examination.
- 41-33-17 through 41-33-39. Repealed.

§ 41-33-1. "Active tuberculosis" defined.

For the purposes of Sections 41-33-1 through 41-33-15, the words "active tuberculosis" shall be construed to mean that tuberculosis is present in a communicable or infectious stage as established by chest x-ray, laboratory examination of sputum or other fluids, or tissues from the patient, or other methods approved by the executive officer of the state board of health.

SOURCES: Codes, 1942, § 7076-01; Laws, 1956, ch. 304, § 1; Laws, 1983, ch. 522, § 18, eff from and after July 1, 1983.

Cross References — Executive officer of state board of health, see § 41-3-5.
Communicable and infectious diseases, generally, see §§ 41-23-1 et seq.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 58 et seq. **CJS.** 39A C.J.S., Health and Environment §§ 21 et seq.

§ 41-33-3. Compulsory commitment of active tuberculosis cases to hospital.

Any person who has been diagnosed as having active tuberculosis and who fails or refuses to carry out minimum precautions outlined to him in writing by the county health officer for the prevention of spread of the disease to another may be committed under duress to any hospital under contract with the state department of health providing services to the tuberculosis patients or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis so long as his disease is active or until such time as it is believed by the county health officer that he will carry out suitable precautions at home to prevent spread of the disease. Any contractual agreement between the Mississippi Department of Corrections and the state department of health shall be voluntary, discretionary and mutually agreed upon by the contracting parties.

SOURCES: Codes, 1942, § 7076-02; Laws, 1956, ch. 304, § 2; Laws, 1983, ch. 522, § 19; Laws, 1984, ch. 435, § 1, eff from and after July 1, 1984.

Cross References — Duties of county health officer, generally, see § 41-3-41.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health § 53.

CJS. 39A C.J.S., Health and Environment §§ 31-41.

§ 41-33-5. Request for approval of court action for commitment.

When the county health officer in any county deems that it is necessary for the protection of the public health for any person who has active tuberculosis to be committed for treatment under duress and desires to proceed with commitment, he shall present in writing to the executive officer of the state board of health a request for his approval of court action to require care. Such request shall include an outline of the facts which show the necessity of commitment.

SOURCES: Codes, 1942, § 7076-03; Laws, 1956, ch. 304, § 3; Laws, 1983, ch. 522, § 20, eff from and after July 1, 1983.

Cross References — Executive officer of state board of health, see § 41-3-5.

§ 41-33-7. Affidavit and hearing in chancery court.

Upon approval by the executive officer of the Mississippi State Board of Health, the county health officer may make affidavit and file it with the clerk of the chancery court of any county in which such person might then be found. Such affidavit shall request that such person be adjudged to be suffering from active tuberculosis and that such person be committed to and confined in any hospital under contract with the state board of health providing services to tuberculosis patients or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis.

Whenever such affidavit shall be filed with the chancery clerk, the said clerk, or the chancellor of said court, shall issue a citation ordering said person alleged to be suffering from such active tuberculosis to appear and show cause why he should not be committed to and confined in a hospital for treatment of tuberculosis in Mississippi or any facility of the Mississippi Department of Corrections under contract capable of adequately isolating patients with tuberculosis. At the same time that the sheriff serves the citation he shall deliver to such person a copy of the county health officer's request of approval of contemplated action and a copy of the approval of such action by the executive officer of the Mississippi State Board of Health.

The hearing shall be conducted in open court and the person alleged to be suffering from active tuberculosis shall have the privilege of counsel of his own

selection. Said hearing shall be held on a day not less than five (5) days from the date of such service of citation. Provided, however, the chancellor may order the hearing at an earlier day when, in his discretion, he deems such to be in the interest of the public health.

SOURCES: Codes, 1942, § 7076-04; Laws, 1956, ch. 304, § 4; Laws, 1976, ch. 324; Laws, 1983, ch. 522, § 21; Laws, 1984, ch. 435, § 2, eff from and after July 1, 1984.

Cross References — Executive officer of state board of health, see § 41-3-5.

RESEARCH REFERENCES

ALR. Liability for wrongful autopsy. 18
A.L.R.4th 858.

§ 41-33-9. Order of commitment to hospital.

If at the hearing the court shall find that the person is suffering from active tuberculosis and that his commitment is in the best interest of the public's health, an order adjudging such fact shall be entered and the clerk shall issue a writ directed to the sheriff to deliver such person to the hospital or facility of the Mississippi Department of Corrections under contract ordered by the court, and such sheriff shall execute such writ and deliver such person accordingly.

The order of the court shall further provide that such person shall submit to such reasonable rules and regulations as may be found necessary for his treatment and the protection of other persons. The chancery court shall have continuing jurisdiction of such person until it is determined by the county health officer that he or she no longer threatens the public health, and if such person violates any of the provisions of the order of the court he shall be in contempt.

SOURCES: Codes, 1942, §§ 7076-05, 7076-08; Laws, 1956, ch. 304, §§ 5, 8; Laws, 1983, ch. 522, § 22; Laws, 1984, ch. 435, § 3, eff from and after July 1, 1984.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first paragraph was corrected by substituting "his commitment is in the best interest of the public's health" for "his commitment is to the best interest of the public's health."

Cross References — Power to punish for contempt, see § 9-1-17.

Sheriff's execution and return of process, see § 19-25-37.

Liability for cost of hospital care, see § 41-33-13.

§ 41-33-11. Discharge from hospital.

With the approval of the county health officer, the attending physician may discharge such person to home care under supervision of the county health officer in the county in which the patient expects to reside.

SOURCES: Codes, 1942, § 7076-06; Laws, 1956, ch. 304, § 6; Laws, 1983, ch. 522, § 23, eff from and after July 1, 1983.

§ 41-33-13. Cost of hospital care.

Individuals committed under Section 41-33-9 shall be subject to the usual financial arrangement as to cost of care as is generally observed by that institution's management.

SOURCES: Codes, 1942, § 7076-07; Laws, 1956, ch. 304, § 7; Laws, 1983, ch. 522, § 24, eff from and after July 1, 1983.

JUDICIAL DECISIONS

1. In general.

Where by statute the weekly charges permitted to be made to patients of a state tuberculosis sanatorium were limited to a stated maximum, the insurer under a health and accident policy which provided

for the payment of certain hospital expense "actually incurred" was limited to the statutory maximum although the benefits provided by the policy were greater. *Reserve Life Ins. Co. v. Coke*, 254 Miss. 936, 183 So. 2d 490 (1966).

§ 41-33-15. Submission to medical examination.

When any county health officer has reasonable grounds to believe that any person has active tuberculosis, he shall formally request such person to submit to a medical examination.

In order to protect the health, safety, and welfare of the public, it shall be a misdemeanor for any person to refuse to submit to a medical examination when the county health officer has reasonable grounds to believe that such person has active tuberculosis, and upon conviction, such person shall be fined not more than fifty dollars (\$50.00) or imprisoned not longer than thirty (30) days, or both.

SOURCES: Codes, 1942, § 7076-08; Laws, 1956, ch. 304, § 8.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 41-33-17 through 41-33-39. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

§ 41-33-17. [Codes, Hemingway's 1917, § 7915; 1930, § 4529; 1942, § 6870; Laws, 1916, ch. 109; Laws, 1971, ch. 312, § 1]

§ 41-33-19. [Codes, Hemingway's 1917, § 7916; 1930, § 4530; 1942, § 6871; Laws, 1916, ch. 109]

§ 41-33-21. [Codes, Hemingway's 1917, § 7917; 1930, § 4531; 1942, § 6872; Laws, 1916, ch. 109; Laws, 1924, ch. 302; Laws, 1934, ch. 381; Laws, 1966, ch. 451, § 1; Laws, 1971, ch. 312, § 2]

§ 41-33-23. [Codes, Hemingway's 1917, § 7921; 1930, § 4536; 1942, § 6877; Laws, 1916, ch. 109]

- § 41-33-25. [Codes, 1930, § 4532; 1942, § 6873; Laws, 1924, ch. 304]
- § 41-33-27. [Codes, 1930, § 4537; 1942, § 6878; Laws, 1924, ch. 308; Laws, 1928, Ex. Sess. ch. 67; Laws, 1964, ch. 427; Laws, 1971, ch. 312, § 3]
- § 41-33-29. [Codes, Hemingway's 1917, § 7918; 1930, § 4533; 1942, § 6874; Laws, 1916, ch. 109; Laws, 1918, ch. 176]
- § 41-33-31. [Codes, Hemingway's 1917, § 7919; 1930, § 4534; 1942, § 6875; Laws, 1916, ch. 109]
- § 41-33-33. [Codes, 1942, § 6880-01; Laws, 1946, ch. 252, §§ 1-5]
- § 41-33-35. [Codes, 1930, §§ 4538, 4539; 1942, §§ 6879, 6880; Laws, 1922, ch. 277]
- § 41-33-37. [Codes, 1942, § 6880-11; Laws, 1956, ch. 306]
- § 41-33-39. [Codes, Hemingway's 1917, §§ 4882-4884, 7920; 1930, §§ 4535, 4918-4920; 1942, §§ 6876, 7074-7076; Laws, 1910, ch. 130; Laws, 1916, ch. 109]

Editor's Note — Former § 41-33-17 continued the existence of the Tuberculosis Sanatorium of Mississippi.

Former § 41-33-19 authorized the state board of health to hire a superintendent and other personnel necessary for management of the Tuberculosis Sanatorium of Mississippi.

Former § 41-33-21 directed the board of health to establish the qualifications for admissions and the of cost of patient care.

Former § 41-33-23 authorized the board of health to accept gifts for benefit of the sanatorium.

Former § 41-33-25 authorized the state board of health to contract with local governments or other organizations for the treated of persons in the sanatorium.

Former § 41-33-27 authorized municipalities and counties to provide treatment for persons suffering from tuberculosis and other respiratory diseases.

Former § 41-33-29 established a bureau for tuberculosis.

Former § 41-33-31 directed the bureau to operate a correspondence school for advising patients.

Former § 41-33-33 provided for educational facilities and training for patients.

Former § 41-33-35 authorized the board of health to sell electric current from a certain tuberculosis sanatorium.

Former § 41-33-37 pertained to the disposition of obsolete equipment and personal property.

Former § 41-33-39 required physicians and others to file report of persons afflicted with tuberculosis, and other diseases.

CHAPTER 34

Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV

- Sec.
- 41-34-1. Definitions applicable to Sections 41-34-1 through 41-34-7.
- 41-34-3. Licensing boards to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health-care providers.
- 41-34-5. Licensing boards to establish procedure for licensees and applicants for license to report status as carrier of Hepatitis B and HIV.
- 41-34-7. Confidentiality of reports of Hepatitis B or HIV carrier status.

§ 41-34-1. Definitions applicable to Sections 41-34-1 through 41-34-7.

For the purposes of Sections 41-34-1 through 41-34-7 the following terms shall have the following meanings:

(a) "Health-care provider" shall mean a person licensed by this state to provide health care or professional services as a physician, podiatrist, registered nurse, licensed practical nurse, nurse practitioner, dentist, chiropractor or optometrist.

(b) "Board" means the State Board of Medical Licensure, State Board of Dental Examiners, the Mississippi Board of Nursing, the State Board of Chiropractic Examiners or the State Board of Optometry.

SOURCES: Laws, 1992, ch. 381, § 1, eff from and after July 1, 1992.

Cross References — State Board of Chiropractic Examiners, see §§ 73-6-3 et seq.
State Board of Dental Examiners, see §§ 73-9-1 et seq.
Mississippi Board of Nursing, see §§ 73-15-1 et seq.
State Board of Optometry, see §§ 73-19-1 et seq.
State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Medical, malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice. 12 A.L.R.5th 1.

Am Jur. 25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.

50 Am. Jur. Trials 1, Liability of Sperm Banks.

§ 41-34-3. Licensing boards to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health-care providers.

Each board licensing health-care providers may establish by rule and regulation practice requirements based, in part, on applicable guidelines from the Federal Centers for Disease Control which will protect the public from the transmission of the Hepatitis B Virus and Human Immunodeficiency Virus in the practice of a profession regulated by the appropriate board.

SOURCES: Laws, 1992, ch. 381, § 2, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 101, 102. 50 Am. Jur. Trials 1, Liability of Sperm Banks.
25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.

§ 41-34-5. Licensing boards to establish procedure for licensees and applicants for license to report status as carrier of Hepatitis B and HIV.

The boards may establish by rule and regulation requirements and procedures for a licensee and a licensure applicant to report his/her status as a carrier of the Hepatitis B Virus and Human Immunodeficiency Virus to the board and shall enforce such requirements and procedures.

SOURCES: Laws, 1992, ch. 381, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 101, 102. 50 Am. Jur. Trials 1, Liability of Sperm Banks.
25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS.

§ 41-34-7. Confidentiality of reports of Hepatitis B or HIV carrier status.

Each report of Hepatitis B Virus carrier status or Human Immunodeficiency Virus carrier status filed in compliance with this section and each record maintained and meetings held by the boards in the course of monitoring a licensee for compliance with the practice requirements established by this section, are confidential and exempt from the provisions of the Mississippi Public Records Law, Sections 25-61-1, et seq.

SOURCES: Laws, 1992, ch. 381, § 4, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Proof of Facts 3d 1, Sperm Bank Liability for Donor Semen Transmitted AIDS. 50 Am. Jur. Trials 1, Liability of Sperm Banks.

CHAPTER 35

Eye Inflammation of Young

SEC.

- 41-35-1. "Inflammation of the eyes of new born" defined.
- 41-35-3. Duty to make report as to any inflammation of the eyes of new born.
- 41-35-5. Duties of the local health officer.
- 41-35-7. Duties of the State Board of Health.
- 41-35-9. Duty of those in attendance at childbirth to use prophylactic in eyes of new born.
- 41-35-11. Violation of chapter constitutes a misdemeanor.

§ 41-35-1. "Inflammation of the eyes of new born" defined.

Any inflammation, swelling or redness in either or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of any such infant, independent of the nature of the infection, if any occurring, any time within two (2) weeks after birth of such infant, shall be known as "inflammation of the eyes of the new born."

SOURCES: Codes, Hemingway's 1917, § 4875; 1930, § 4911; 1942, § 7067; Laws, 1916, ch. 115.

§ 41-35-3. Duty to make report as to any inflammation of the eyes of new born.

It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature, parent, relative or other person attendant on or assisting in any way whatsoever, any infant, or the mother of any infant, at childbirth, or at any time within two (2) weeks after childbirth, knowing the condition defined in Section 41-35-1 to exist, within six (6) hours thereafter, to report such fact, as the state board of health shall direct, to the local health officer of the city, town, village, or whatever other political division there may be, within which the infant or the mother of the infant may reside.

SOURCES: Codes, Hemingway's 1917, § 4876; 1930, § 4912; 1942, § 7068; Laws, 1916, ch. 115.

Cross References — Practice of medicine, see § 73-25-33.

§ 41-35-5. Duties of the local health officer.

It shall be the duty of the local health officer: (1) to investigate or to have investigated each case of inflammation of the eyes of the new born as filed with him, in pursuance of the law, and any other such case as may come to his attention; (2) to report all cases of inflammation of the eyes of the new born and the result of all such investigations as the state board of health shall direct; (3) to conform to such other rules and regulations as the state board of health shall promulgate for his further guidance.

SOURCES: Codes, Hemingway's 1917, § 4877; 1930, § 4913; 1942, § 7069; Laws, 1916, ch. 115.

Cross References — County health officers and boards, see §§ 41-3-37, 41-3-43. Municipal health boards, see § 41-3-57.

§ 41-35-7. Duties of the State Board of Health.

It shall be the duty of the State Board of Health: (1) To enforce the provisions of this chapter; (2) to promulgate such rules and regulations as shall, under this chapter, be necessary for the purpose under this chapter, and such as the State Board of Health may deem necessary for the further and proper guidance of local health officers, etc.; (3) to provide for the gratuitous distribution of a scientific prophylactic for inflammation of the eyes of the new born, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (4) to provide, if necessary, daily inspection and prompt and gratuitous treatment to any infant whose eyes are infected with inflammation of the eyes; the State Board of Health, if necessary, shall defray the expenses of such treatment from such sums as may be appropriated for its use; (5) to publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the new born and the necessity for prompt and effective treatment; (6) to furnish copies of this chapter to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (7) to keep a proper record of any and all such cases of inflammation of the eyes of the new born, as shall be filed in the office of the state board of health, in pursuance with this chapter, and as may come to its attention in any way, and to constitute such record a part of the annual report to the governor and legislature; (8) to report any and all violations of this chapter as may come to its attention, to the local police, county prosecutor, or district attorney in the county wherein such violation may have been committed, and to assist such official in every way possible, such as securing necessary evidence, etc.

SOURCES: Codes, Hemingway's 1917, § 4878; 1930, § 4914; 1942, § 7070; Laws, 1916, ch. 115.

Cross References — State board of health, see §§ 41-3-1 et seq.

§ 41-35-9. Duty of those in attendance at childbirth to use prophylactic in eyes of new born.

It shall be the duty of the physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant immediately after birth, to use some prophylactic against inflammation of the eyes of the new born and to make record of the prophylactic used. It shall be the duty of such institution to

maintain such records of cases of inflammation of the eyes of the new born as the state board of health shall direct.

It shall be the duty of a midwife in every case of childbirth under her care, immediately after birth, to use such prophylactic against inflammation of the eyes of the new born as the state board of health requires.

SOURCES: Codes, Hemingway's 1917, §§ 4879, 4880; 1930, §§ 4915, 4916; 1942, §§ 7071, 7072; Laws, 1916, ch. 115.

RESEARCH REFERENCES

ALR. Nurse's liability for her own negligence or malpractice. 51 A.L.R.2d 970.

§ 41-35-11. Violation of chapter constitutes a misdemeanor.

The failure of any person to comply with any of the provisions of this chapter shall constitute a misdemeanor. The offender shall, on conviction thereof, be fined for the first offense not to exceed fifty dollars (\$50.00), for the second offense, not to exceed one hundred dollars (\$100.00), and for the third offense and thereafter, not to exceed two hundred dollars (\$200.00) for each violation. It shall be the duty of the local police, county prosecutor, or the district attorney to prosecute for all misdemeanors as herein prescribed.

SOURCES: Codes, Hemingway's 1917, § 4881; 1930, § 4917; 1942, § 7073; Laws, 1916, ch. 115.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 36

Determination of Death

SEC.

41-36-1. Short title.

41-36-3. Determination of death.

§ 41-36-1. Short title.

This chapter may be cited as the Uniform Determination of Death Law.

SOURCES: Laws, 1981, ch. 410, § 1, eff from and after passage (approved March 24, 1981).

Cross References — Contracts for donation of parts of human bodies, see § 41-39-9.

Comparable Laws from other States — Arkansas Code Annotated, § 20-17-1010.
Georgia Code Annotated, § 31-10-16.

RESEARCH REFERENCES

Am Jur. 22A Am. Jur. 2d, Dead Bodies **CJS.** 25A C.J.S., Death § 1.
§ 28.

16 Am. Jur. Proof of Facts 2d, Time of
Death, §§ 16 et seq. (proof of time of
death).

§ 41-36-3. Determination of death.

An individual who has sustained either (a) irreversible cessation of circulatory and respiratory functions or (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

SOURCES: Laws, 1981, ch. 410, § 2, eff from and after passage (approved March 24, 1981).

Comparable Laws from other States — Arkansas Code Annotated, § 20-17-1010.
Georgia Code Annotated, § 31-10-16.

JUDICIAL DECISIONS

1. In general.

A jury issue as to whether the accused had sexually assaulted victim while in commission of murder was made by evidence showing that a puddle of liquid was found under the pelvic area of the partially unclad body, although testimony of witnesses showed that a shot was fired

almost immediately after accused had forced his way into victim's apartment, and the pathologist testified that bullet had gone through victim's heart. *West v. State*, 485 So. 2d 681 (Miss. 1985), cert. denied, 479 U.S. 983, 107 S. Ct. 570, 93 L. Ed. 2d 574 (1986).

RESEARCH REFERENCES

ALR. Tests of death for organ transplant purposes. 76 A.L.R.3d 913.

Am Jur. 22A Am. Jur. 2d, Dead Bodies § 28.

16 Am. Jur. Proof of Facts 2d, Time of Death, §§ 16 et seq. (proof of time of death).

CJS. 25A C.J.S., Death § 1.

CHAPTER 37

Autopsies

SEC.

- 41-37-1. "Autopsy" defined.
- 41-37-3. Purposes for which autopsy may be performed.
- 41-37-5. Who may perform autopsy.
- 41-37-7. Liability of physician performing autopsy.
- 41-37-9. Autopsy under court order; procedure.
- 41-37-11. Use of chemical analysis in criminal investigations.
- 41-37-13. Autopsy report.
- 41-37-15. Fees of physician and chemist.
- 41-37-17. Payment of disinterment expenses.
- 41-37-19. Admissibility of evidence obtained through autopsy in civil case.
- 41-37-21. Physician or chemist may be subpoenaed in criminal case.
- 41-37-23. Autopsy may be ordered on petition of certain health officials.
- 41-37-25. Autopsy may be performed when consent thereto is given.

§ 41-37-1. "Autopsy" defined.

The term "autopsy" as used in this chapter shall be construed to mean the scientific examination of the body of a deceased person, or any portion thereof, by acceptable scientific methods and the removal and retention of parts of the body to accomplish such an examination.

The term "autopsy" as used in this chapter shall not be construed to mean the scientific dissection of the whole body as practiced in medical schools in the instruction of anatomy to medical students.

SOURCES: Codes, 1942, § 7158-01; Laws, 1960, ch. 258, §§ 1, 2, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

| | |
|---|---|
| Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48. | CJS. 25A C.J.S., Dead Bodies §§ 2, 4(3), 8(3). |
| 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy. | |

§ 41-37-3. Purposes for which autopsy may be performed.

An autopsy may be performed, as provided by this chapter, for the purpose of determining the primary and/or contributing cause of death in the interest of public health and in criminal cases.

SOURCES: Codes, 1942, § 7158-02; Laws, 1960, ch. 258, § 3, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

| | |
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| ALR. Liability for performing an autopsy. 83 A.L.R.2d 955. | Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners § 13. |
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22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases.

CJS. 23 C.J.S., Criminal Law § 1353.

25A C.J.S., Dead Bodies §§ 2-11.

§ 41-37-5. Who may perform autopsy.

Only a physician duly licensed by the Mississippi State Board of Health may perform an autopsy.

SOURCES: Codes, 1942, § 7158-03; Laws, 1960, ch. 258, § 4, eff from and after passage (approved May 11, 1960).

Editor's Note — Authority to license and discipline physicians in Mississippi was transferred from the state board of health to the state board of medical licensure by Laws of 1980, ch. 458. See §§ 73-25-1 et seq. and §§ 73-43-1 et seq.

Cross References — Physicians, generally, see §§ 73-25-1 et seq.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases.

§ 41-37-7. Liability of physician performing autopsy.

A duly licensed physician authorized to perform an autopsy as provided in this chapter, and who, in good faith, complies with the provisions of this chapter in the performance of an autopsy, shall not be liable for damages on account thereof.

SOURCES: Codes, 1942, § 7158-12; Laws, 1960, ch. 258, § 13, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

ALR. Civil liability of undertaker for acts or omissions relating to corpse. 17 A.L.R.2d 770.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.

Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

Am Jur. 22A Am. Jur. 2d, Dead Bodies § 49.

7 Am. Jur. Pl & Pr Forms (Rev), Coroners or Medical Examiners, Form 3 (com-

plaint, petition, or declaration — against coroner — for unauthorized autopsy).

8 Am. Jur. Pl & Pr Forms (Rev), Dead Bodies, Form 31 (complaint, petition, or declaration — against hospital and physician — for unauthorized autopsy).

34 Am. Jur. Proof of Facts 2d 557, Adequacy of Consent to Autopsy.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS. 25A C.J.S., Dead Bodies §§ 16-18.

§ 41-37-9. Autopsy under court order; procedure.

A circuit judge, chancellor or county judge of the county or district where a person died or where the body of such deceased person may be or where the mortal stroke or other cause of death occurred, may, in his discretion, either in term time or in vacation, order an autopsy to be performed upon the body of such deceased person (1) upon the petition of a county prosecuting attorney of the county where the person died, or where the body of such deceased person may be at the time or where the mortal stroke or other cause of death occurred, or (2) upon petition of the district attorney of the district where the person died, or where the body of such deceased person may be at the time or where the mortal stroke or other cause of death occurred. In the event that said petition is filed by the county prosecuting attorney or district attorney, it shall contain allegations that the petitioner believes, has reason to believe, or suspects that such deceased person came to his death by some criminal means or agency, or that the cause of justice would be promoted by having an autopsy performed upon the body of such deceased person. Said petition shall be sworn to and shall be filed in the court of the judge or chancellor who makes the order, and shall be docketed by the clerk as are other cases or suits. If the body of such deceased person has already been interred, the petition shall so state, and if an autopsy is ordered, the order shall order the disinterment of such body for such autopsy and shall order any lawful officer of the county where said body may be buried to employ suitable help to disinter said body and to keep it in a suitable place until said autopsy shall have been performed. If there has been no interment of the body of such deceased person, a copy of the order ordering an autopsy upon said deceased shall be served by the sheriff of the county, or any other person authorized to serve process, upon any person who may be found in charge of any funeral home where said body may be, and such funeral home shall hold said body for autopsy. If the body of such deceased person be not found in any funeral home the sheriff of the county where it may be found shall take said body and keep it in a suitable place until said autopsy shall have been performed. If an autopsy is ordered as provided in this section, the petitioner shall immediately secure the services of a qualified person to perform such autopsy.

SOURCES: Codes, 1942, § 7158-04; Laws, 1960, ch. 258, § 5, eff from and after passage (approved May 11, 1960).

Cross References — Admissibility in civil case of evidence obtained through autopsy, see § 41-37-19.

Regulation of funeral establishments, see § 73-11-33 et seq.

JUDICIAL DECISIONS**1. In general.**

The statute is directed at autopsies conducted by court order upon the petition of either a county prosecuting attorney or

the district attorney. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly permitted to testify. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and

the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. *Hamilton v. Chaffin*, 506 F.2d 904 (5th Cir. 1975).

It was not the legislative intent and purpose for an accused in a criminal case to have the standing or the right to complain that all technicalities required by the statute had not been strictly followed in the ordering of an autopsy, and the fact that copies of the autopsy report had not been filed with the circuit clerk did not render the report inadmissible at the trial, for copies had previously been furnished to counsel for the defendant. *Pendergraft v. State*, 213 So. 2d 560 (Miss. 1968), appeal dismissed, 394 U.S. 715, 89 S. Ct. 1453, 22 L. Ed. 2d 671 (1969), reh'g denied, 395 U.S. 941, 89 S. Ct. 1993, 23 L. Ed. 2d 459 (1969).

ATTORNEY GENERAL OPINIONS

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental

Health, in whose custody the patient died. *Hendrix*, Apr. 23, 2004, A.G. Op. 04-0161.

RESEARCH REFERENCES

ALR. Civil liability of undertaker for acts or omissions relating to corpse. 17 A.L.R.2d 770.

Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.

Civil liability in conjunction with autopsy. 97 A.L.R.5th 419.

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners § 13.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-48.

5A Am. Jur. Legal Forms 2d, Coroners or Medical Examiners, § 73:13 (authorization or direction by prosecuting attorney to perform autopsy).

5A Am. Jur. Legal Forms 2d, Coroners or Medical Examiners, § 73:15 (demand for dead body).

7 Am. Jur. Pl & Pr Forms (Rev), Coroners or Medical Examiners, Forms 1 et seq.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS. 25A C.J.S., Dead Bodies § 10.

§ 41-37-11. Use of chemical analysis in criminal investigations.

The physician performing the autopsy in criminal investigations may obtain the services of a chemist competent to make a chemical analysis, or such

services may be ordered by such judge or chancellor in term time or in vacation. The records of such chemical analysis shall be made a part of the autopsy report.

SOURCES: Codes, 1942, § 7158-10; Laws, 1960, ch. 258, § 11, eff from and after passage (approved May 11, 1960).

Cross References — Fee to be paid to a chemist for services performed pursuant to this section, see § 41-37-15.

RESEARCH REFERENCES

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| Am Jur. 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy. | 40 Am. Jur. Trials 501, Forensic Pathology in Homicide Cases. |
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§ 41-37-13. Autopsy report.

In all cases where an autopsy is performed as provided in Section 41-37-9, the person making said autopsy shall file a report, in duplicate, of said autopsy with the circuit clerk of the county where the death is being investigated. Such circuit clerk shall keep and preserve said report and make it available to the district attorney, county prosecuting attorney, grand jury, coroner, and to the accused.

SOURCES: Codes, 1942, § 7158-05; Laws, 1960, ch. 258, § 6, eff from and after passage (approved May 11, 1960).

JUDICIAL DECISIONS

1. In general.

It was not the legislative intent and purpose for an accused in a criminal case to have the standing or the right to complain that all technicalities required by the statute had not been strictly followed in the ordering of an autopsy, and the fact that copies of the autopsy report had not been filed with the circuit clerk did not

render the report inadmissible at the trial, for copies had previously been furnished to counsel for the defendant. *Pendergraft v. State*, 213 So. 2d 560 (Miss. 1968), appeal dismissed, 394 U.S. 715, 89 S. Ct. 1453, 22 L. Ed. 2d 671 (1969), reh'g denied, 395 U.S. 941, 89 S. Ct. 1993, 23 L. Ed. 2d 459 (1969).

RESEARCH REFERENCES

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| Am Jur. 5A Am. Jur. Legal Forms 2d, Coroners § 73:18 (findings or report as to autopsy). | 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy. |
| 5A Am. Jur. Legal Forms 2d, Coroners § 73:19 (coroner's certificate of death). | 2 Am. Jur. Trials 409, Locating Public Records. |

§ 41-37-15. Fees of physician and chemist.

The physician performing the autopsy shall be paid a fee not exceeding the sum of Two Hundred Dollars (\$200.00), which sum shall be paid out of the

treasury of the county in the interest of which the autopsy was ordered, upon the allowance and warrant of the board of supervisors of such county. If the physician performing the autopsy is a qualified pathologist, such fee may be increased to Four Hundred Dollars (\$400.00).

A chemist whose services are used pursuant to Section 41-37-11 may be paid a fee not to exceed Sixty Dollars (\$60.00) for such chemical analysis. The fee of said chemist for such analysis shall be paid in like manner as that of the autopsy physician.

SOURCES: Codes, 1942, §§ 7158-06, 7158-10; Laws, 1960, ch. 258, §§ 7, 11; Laws, 1970, ch. 412, § 2; Laws, 1983, ch. 509; Laws, 1985, ch. 416, eff from and after October 1, 1985.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Pl & Pr Forms 39 Am. Jur. Proof of Facts 2d 1, Cause of (Rev), Coroners or Medical Examiners, Death as Determined From Autopsy. Form 19 (certificate — by coroner — value of physician's services).

§ 41-37-17. Payment of disinterment expenses.

In cases where the disinterment of a body is ordered, the sheriff shall be reimbursed for all expenses incurred by him, which sum shall be paid out of the treasury of the county where the deceased came to his death, upon the allowance and warrant of the board of supervisors of such county. Said board of supervisors shall order payment of the same on the itemized claim of such sheriff.

SOURCES: Codes, 1942, § 7158-07; Laws, 1960, ch. 258, § 8, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

§ 41-37-19. Admissibility of evidence obtained through autopsy in civil case.

No evidence obtained through any autopsy performed under the provisions of Section 41-37-9 shall be admitted over the objection of any party in the trial of any civil cause before a court or commission of this state.

SOURCES: Codes, 1942, § 7158-04; Laws, 1960, ch. 258, § 5, eff from and after passage (approved May 11, 1960).

JUDICIAL DECISIONS

1. In general.

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county at-

torney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. *Hamilton v. Chaffin*, 506 F.2d 904 (5th Cir. 1975).

RESEARCH REFERENCES

ALR. Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Am Jur. 2 Am. Jur. Proof of Facts, Autopsy, Proof No. 1 (complete autopsy — death due to spinal concussion — testimony of physician (pathologist)).

4 Am. Jur. Proof of Facts, Death, Proof No. 1 (testimony of attending physician).

15 Am. Jur. Proof of Facts, Death Certification, § 12 (discrediting a death certificate).

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

§ 41-37-21. Physician or chemist may be subpoenaed in criminal case.

The physician performing the autopsy or the chemist performing such analysis in criminal investigations may be subpoenaed as a witness in any such criminal case. If subpoenaed as a prosecution witness, he shall be paid a fee of fifty dollars (\$50.00) per day as an expert witness for each day while in attendance at the trial, and in addition thereto he shall be paid seven cents (7¢) per mile for travel from his home to the location of the trial and return. The fees herein provided for shall be paid to prosecution witnesses as otherwise provided for by law for the payment of such witness fees. If subpoenaed as a witness by the defense, such physician or chemist may collect a fee from the defendant not to exceed that prescribed hereunder for prosecution witnesses.

SOURCES: Codes, 1942, § 7158-11; Laws, 1960, ch. 258, § 12, eff from and after passage (approved May 11, 1960),

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

33 Am. Jur. Trials 467, Pathologist as Expert Witness: Malpractice Considerations.

§ 41-37-23. Autopsy may be ordered on petition of certain health officials.

The executive officer of the Mississippi State Board of Health or a county health officer may petition in like manner as is provided in Section 41-37-9 a circuit judge, chancellor, or county judge in any county in which a person dies or where the body of such deceased person may be, and such circuit judge, chancellor, or county judge may order an autopsy to be performed upon the body of such deceased person in the interest of public health and welfare in cases where the cause of death is not known and cannot be determined with reasonable certainty without an autopsy and when it would appear to such judge or chancellor by such petition and evidence in support thereof that death may have been due to communicable disease or contagious disease or to poison, foreign substance, radiation or for any other reason exact knowledge as to which would be of benefit to the public health and welfare. In such cases the same fees as specified in criminal investigations to the autopsy physician and chemist shall be allowed by the board of supervisors out of the general fund of the county in which such petition is filed, except that no fee shall be allowed and paid to any physician or chemist who is a regular salaried employee of the state or county. A copy of the report of the autopsy physician and chemist in such cases shall be filed with the clerk of the court in which such order was entered, with the county health officer of such county and with the executive officer of the state board of health.

SOURCES: Codes, 1942, § 7158-09; Laws, 1960, ch. 258, § 10, eff from and after passage (approved May 11, 1960).

Cross References — Communicable and infectious diseases, see §§ 41-23-1 et seq.

JUDICIAL DECISIONS

1. In general.

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrong-

ful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to admit such crucial, probative, trustworthy proof. *Hamilton v. Chaffin*, 506 F.2d 904 (5th Cir. 1975).

ATTORNEY GENERAL OPINIONS

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental

Health, in whose custody the patient died. *Hendrix*, Apr. 23, 2004, A.G. Op. 04-0161.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners § 14.

22A Am. Jur. 2d, Dead Bodies §§ 43, 45-49.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS. 25A C.J.S., Dead Bodies §§ 2, 10.

§ 41-37-25. Autopsy may be performed when consent thereto is given.

An autopsy may be performed without court order by a qualified physician when authorized by (a) the decedent, during his lifetime, or (b) any of the following persons who shall have assumed custody of the body for the purpose of burial: a surviving spouse, either parent or any person in loco parentis, a descendant over the age of eighteen years, a guardian, or the next of kin. In the absence of any of the foregoing persons any friend of the deceased who has assumed responsibility for burial, or any other person charged by law with responsibility for burial, may give such consent. If two or more persons have assumed custody of the body of an adult for purposes of burial, the consent of one such person shall be deemed sufficient.

In the case of a minor, however, the consent of either parent shall be deemed sufficient, unless the other parent gives written notice to the physician who is to perform the autopsy of such parent's objection thereto prior to the commencement of the autopsy. In the event that neither parent has legal custody of the minor, the guardian shall have the right to authorize an autopsy. The fees provided in this chapter for autopsies in criminal investigations shall not be applicable to this section.

No autopsy shall be held under this section over the objection of the surviving spouse, or if there be no surviving spouse, of any surviving parent, or if there be neither a surviving spouse nor parent, then of any surviving child.

SOURCES: Codes, 1942, § 7158-08; Laws, 1960, ch. 258, § 9, eff from and after passage (approved May 11, 1960).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the last paragraph. The word "by" was changed to "be" so that "...if there by no surviving spouse..." will read "...if there be no surviving spouse...". The Joint Committee ratified the correction at its June 3, 2003, meeting.

JUDICIAL DECISIONS

1. In general.

Although neither the county attorney nor the physician performing the autopsy complied with Code 1972, §§ 41-37-9, 41-37-23, or 41-37-25, a chemist's testimony based upon the autopsy was admissible in plaintiff's civil action for wrongful death where neither the county attorney nor the

performing physician was a party to the litigation, no evidence was adduced which tended to show malice or intentional wrongful actions by either the county attorney or the physician, no evidence was presented which even intimated that the defendants were in any way involved in procuring or performing the autopsy, and

the analysis of the blood sample taken was the best evidence of the state of decedent's intoxication; in this situation, there would be no deterrent value in refusing to

admit such crucial, probative, trustworthy proof. *Hamilton v. Chaffin*, 506 F.2d 904 (5th Cir. 1975).

ATTORNEY GENERAL OPINIONS

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental

Health, in whose custody the patient died. *Hendrix*, Apr. 23, 2004, A.G. Op. 04-0161.

RESEARCH REFERENCES

ALR. Liability for wrongful autopsy. 18 A.L.R.4th 858.

Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 43, 45-49.

5A Am. Jur. Legal Forms 2d, Coroners, § 73:14 (request to have autopsy performed — indemnification of authorized officer).

7 Am. Jur. Legal Forms 2d, Dead Bodies §§ 84:61 et seq. (autopsies and anatomical gifts).

8 Am. Jur. Pl & Pr Forms (Rev), Dead Bodies, Forms 33, 34 (complaint, petition, or declaration — against insurance company — procuring unauthorized autopsy).

34 Am. Jur. Proof of Facts 2d 557, Adequacy of Consent to Autopsy.

39 Am. Jur. Proof of Facts 2d 1, Cause of Death as Determined From Autopsy.

CJS. 25A C.J.S., Dead Bodies §§ 2, 10, 16-18.

CHAPTER 39

Disposition of Human Bodies or Parts

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| In General | 41-39-1 |
| The Anatomical Gift Law. [Repealed] | |
| Revised Mississippi Uniform Anatomical Gift Act (UAGA) | 41-39-101 |

IN GENERAL

SEC.

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| 41-39-1. | Disposition of tissue or external member of human body and dead fetus. |
| 41-39-3. | Regulations for disposition of dead foetus acquired by hospital or midwife. |
| 41-39-5. | Disposition of unclaimed dead bodies. |
| 41-39-7. | Bodies of deceased hospital patients to be turned over to educational institutions in certain cases. |
| 41-39-9. | Contracts for donation of parts of human bodies. |
| 41-39-11. | Use of chemical analysis in criminal investigations. |
| 41-39-13. | Tags on bodies of persons with infectious or communicable diseases. |
| 41-39-15. | Repealed. |

§ 41-39-1. Disposition of tissue or external member of human body and dead fetus.

Any physician removing or otherwise acquiring any tissue of the human body may, in his discretion, after making or causing to be made such scientific examination of the same as he may deem appropriate or as may be required by law, custom or rules and regulations of the hospital or other institution in which the tissue may have been removed or acquired, authorize disposition of the same by incineration, cremation, burial or other sanitary method approved by the state board of health, unless he shall have been furnished prior to removal or acquisition of the tissue, or at any time prior to its disposal, a written request that the same be delivered to the patient or someone in his behalf or, if death has occurred, to the person claiming the dead body for burial or cremation. No such tissue shall be delivered, however, except as may be permitted by rules and regulations of the state board of health. Any hospital or other institution acquiring possession of any such tissue, and not having written instructions to the contrary from the attending physician, the patient or the person claiming a dead body for burial or cremation, or someone in their behalf, may immediately dispose of the same as hereinabove provided.

However, no external member of the human body may be so disposed of within forty-eight hours of its removal or acquisition unless consent thereto be obtained in writing from the patient or the person authorizing the medical or surgical treatment of the patient, and no dead foetus shall be so disposed of within the same period of time unless consent thereto be obtained in writing from the mother of the dead foetus or her spouse. For the purposes of this section, an external member of the human body is defined as an arm or one or

more joints thereof, a hand, a finger or one or more joints thereof, a leg or one or more joints thereof, a foot, a toe or one or more joints thereof, an ear or the greater part thereof, or the nose or the greater part thereof. For the purposes of this section and the succeeding section, a dead foetus is defined as a product of human conception, exclusive of its placenta or connective tissue, which has suffered death prior to its complete expulsion or extraction from the mother, as established by the fact that after such expulsion or extraction the foetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

SOURCES: Codes, 1492, § 7068-01; Laws, 1964, ch. 436, § 1, eff from and after passage (approved May 4, 1964).

Cross References — Requirement that tags be affixed to bodies of deceased persons with infectious or communicable diseases, see § 41-39-13.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

Am Jur. 7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:71.1 (tissue donation).
9 Am. Jur. Legal Forms 2d, Gifts § 130:106.

§ 41-39-3. Regulations for disposition of dead foetus acquired by hospital or midwife.

The State Board of Health may provide by rules and regulations for the disposition of any dead foetus acquired by any hospital or by any midwife or person acting as a midwife, such disposition to be in a manner consistent with the provisions of Section 41-39-1 except that the waiting period for such disposition may be waived.

SOURCES: Codes, 1942, § 7068-02; Laws, 1964, ch. 436, § 2; Laws, 1976, ch. 320, eff from and after passage (approved April 6, 1976).

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes making it a criminal

offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

§ 41-39-5. Disposition of unclaimed dead bodies.

Any physician, hospital, funeral director, embalmer, coroner or other person acquiring possession of a dead human body or portion thereof which is not claimed for burial or cremation within forty-eight (48) hours of its acquisition shall give written notice thereof to the board of supervisors, or a member thereof, of the county in which the dead body or portion thereof is located, furnishing such identification of the decedent as may be available. The board of supervisors shall make reasonable efforts to notify members of the decedent's family or other known interested persons, and, if the dead body or

portion thereof shall not be claimed for burial or cremation by any interested person within five (5) days of the aforementioned written notice, the board of supervisors shall, as soon as it may think appropriate, authorize and direct the burial or cremation and burial of the residue of such dead body or portion thereof. In its discretion and where otherwise permitted to do so by law, the board of supervisors may direct the disposition of the dead body or portion thereof as provided by Section 41-39-7. The reasonable expense of such burial or cremation and burial of the residue of a dead body shall be borne by the estate of the decedent or of any person liable at law for the necessities of the decedent during his lifetime or, if they are unable to pay the same, by the county of residence or settlement of the decedent, if known, and, if not known, by the county in which the dead body or portion thereof is located.

If the person having possession of such dead human body or portion thereof shall have no available means of preserving the same and shall so notify the board of supervisors, or a member thereof, of the county in which the dead body or portion thereof is located, it shall be the duty of the board of supervisors to make arrangements for the preservation of the same until burial or cremation and burial of the residue of the dead body as hereinabove provided, and the expense of such preservation shall be borne as hereinabove provided with respect to the expense of burial or cremation.

SOURCES: Codes, 1942, § 7068-03; Laws, 1964, ch. 436, § 3, eff from and after passage (approved May 4, 1964).

Cross References — Donation of unclaimed body of executed prisoner, see § 99-19-55.

ATTORNEY GENERAL OPINIONS

Based on Section 41-39-5, if the county coroner has no available means of preserving a dead body until family members can make arrangements for a burial or cremation, the county board of supervisors has the duty to make arrangements for the preservation of such a body until family members may make such arrangements. Hemphill, August 30, 1996, A.G. Op. #96-0586.

In a case where the coroner has determined that an autopsy is not necessary, and the next of kin cannot be reached, the board of supervisors has the duty to make arrangements for the transportation and preservation of the body until family members may make arrangements, and

any expenses incurred by the county would ultimately be the responsibility of decedent's estate or that person liable at law for the necessities of the decedent during his or her lifetime. Williams, Jan. 24, 2003, A.G. Op. #02-0727.

A board of supervisors has the authority to bury unclaimed bodies, identified paupers, and unknown strangers after an order has been spread on their official board minutes; however, these laws do not contemplate the county supplementing or reimbursing persons merely claiming to be or have been paupers solely to gain funeral assistance for the family. Chamberlin, May 9, 2003, A.G. Op. #03-0214.

RESEARCH REFERENCES

ALR. Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 1, 5.

CJS. 25A C.J.S., Dead Bodies § 6.

§ 41-39-7. Bodies of deceased hospital patients to be turned over to educational institutions in certain cases.

Upon the request of the secretary of the state board of health, the authorities in charge of the hospitals supported either wholly or partly by state funds are authorized and directed to deliver any body of any person, except the bodies of mentally ill and mentally retarded persons, dying in any of said hospitals to the duly authorized representatives of the state university or any medical college or any accredited mortuary science program in any junior college in this state, giving the state university preference in the event there is an insufficiency in dissecting material for the use of all hospitals for anatomical purposes. This applies to the remains of any person, except mentally ill and mentally retarded persons, who dies in any of said hospitals, when the body is not, within a reasonable time after death, claimed for burial by some fraternal order, or by some person related to the deceased by blood or marriage, or by some friend. The state board of health shall have authority to adopt regulations for the proper burial of those mentally ill persons and mentally retarded persons. However, the human remains of any unknown person who is a traveler dying suddenly shall not be so delivered or used for anatomical purposes. Any human remains, so delivered, shall be properly and decently removed from the hospital, at the expense of the party to whom the same may be delivered, and shall be transported under such regulations as the state board of health may prescribe, and after use for strictly necessary medical study, in the medical department of the university, or in any medical college, or in any accredited mortuary science program in any junior college in this state, as the case may be, the body shall be decently interred or may be cremated and the residue interred at the expense of the party using the same. The state board of health shall have authority to regulate and restrict the use of dead bodies used for the above purposes. The authorities of the hospitals, the secretary of the state board of health, and the authorities of the university, any medical college and any accredited mortuary science program in any junior college in this state, shall each cause a record to be kept of each body used and disposed of, under the provisions of this section, and such records shall be subject to inspection of any member of the state board of health at any time.

SOURCES: Codes, Hemingway's 1917, § 7936; 1930, § 7203; 1942, § 6709; Laws, 1908, ch. 205; Laws, 1956, ch. 229; Laws, 1980, ch. 403, § 1; Laws, 1981, ch. 403, § 1, eff from and after July 1, 1981.

Cross References — Uniform Determination of Death Law, see §§ 41-36-1 et seq. Criminal offenses involving dead bodies, see §§ 97-29-19 through 97-29-23.

RESEARCH REFERENCES

Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 41, 82. **CJS.** 25A C.J.S., Dead Bodies §§ 16-18.

§ 41-39-9. Contracts for donation of parts of human bodies.

It is hereby declared lawful for any person eighteen (18) years of age and over, having a sound and disposing mind, to enter into a written contract with a qualified hospital or medical school to donate his eyes, heart, kidney or other transplantable part of a human body to medical science or for medical purposes. Any contract entered into under the terms of this section is hereby declared to be binding upon the surviving spouse or other heirs of the deceased who have the right under general law to claim his body.

Any person entering into such a contract may, during his or her lifetime, revoke by a written instrument, signed by both parties, said contract in its entirety. However, if any such person has received any monetary consideration for entering into said written contract, he or she upon revoking said contract shall repay such monetary consideration to those from whom he or she received the consideration, in full, plus six percent (6%) interest from the date of the signing of the contract.

SOURCES: Codes, 1942, § 278.5; Laws, 1966, ch. 480, §§ 1, 2; Laws, 1976, ch. 406, § 1, eff from and after July 1, 1976.

RESEARCH REFERENCES

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| ALR. Tests of death for organ transplant purposes. 76 A.L.R.3d 913. | 7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:67 (pledge of eyes after death). |
| Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 86 et seq. | 7 Am. Jur. Legal Forms 2d, Dead Bodies § 84:71.1 (tissue donation). |

§ 41-39-11. Use of chemical analysis in criminal investigations.

(1) In respect to a gift of an eye as provided for in this chapter, a person licensed for the practice of funeral service under the provisions of Sections 73-11-41 et seq., who has successfully completed a course in eye enucleation and has received a certificate of competence from the state board of health, may enucleate eyes for such gift after the proper certification of death by a physician and compliance with the extent of such gift as defined within Sections 41-39-31 through 41-39-53. No such properly certified funeral service licensee acting in accordance with the terms of this chapter shall have any liability, civil or criminal, for such eye enucleation.

(2) The state board of health shall promulgate such rules as are necessary to provide for the proper certification of such funeral service licensees and for the implementation of this section.

SOURCES: Laws, 1975, ch. 328, § 1; Laws, 1983, ch. 351, § 11, eff from and after July 1, 1984.

Editor's Note — Section 41-39-53, referred to in (1), was repealed by Laws of 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions see the Revised Mississippi Uniform Anatomical Gift Act, §§ 41-39-101 et seq.

§ 41-39-13. Tags on bodies of persons with infectious or communicable diseases.

(1) For the purposes of this section, the term “infectious or communicable disease” means the following:

- (a) Infectious hepatitis;
- (b) Tuberculosis;
- (c) Any venereal disease;
- (d) Acquired immune deficiency syndrome (AIDS); or

(e) Any other disease designated by the State Board of Health in its rules and regulations as a disease transmissible through blood contact for which precautions are necessary in embalming or otherwise handling dead bodies infected with the disease or its causative agent.

(2) Upon the death of a person who has been diagnosed as having an infectious or communicable disease or its causative agent, in a hospital or other health-care facility, and in all other cases where there is an attending physician, the attending physician, or person in charge of the hospital or health-care facility, shall affix or cause to be affixed a tag on the body, preferably on the great toe. The tag shall be on card stock paper and shall be no smaller than five (5) centimeters by ten (10) centimeters. It shall be red in color and shall include the words “BLOOD/BODY FLUID PRECAUTIONS REQUIRED” in letters no smaller than six (6) millimeters in height. The name of the deceased person shall be written on the tag and the tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(3) Upon the death of a person infected with the agent which causes an infectious or communicable disease, outside of a hospital or health-care facility or without an attending physician, any family member or person making arrangements for the disposition of the body who knows that the deceased was infected with such agent at the time of death shall advise the person taking charge of the body for disposition of this fact. The person taking charge of the body then shall affix or cause to be affixed a tag on the body as described in subsection (2) of this section.

(4)(a) Failure to comply with the requirements of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by confinement in the county jail for not more than thirty (30) days, or both.

(b) The provisions of this subsection are cumulative and supplemental to any other provision of law, and a conviction or penalty imposed under this section shall not preclude any other action at law, proceedings for professional discipline or other criminal proceedings.

SOURCES: Laws, 1987, ch. 378, eff from and after July 1, 1987.

Cross References — Disposition of tissue or external member of decedent's body, see § 41-39-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 41-39-13, medical examiner should place "toe tag" on body only if he knows that deceased was infected with agent which causes infectious or communicable disease, and

that he is under no obligation to attempt to identify presence of such agent for purpose of tagging body. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

§ 41-39-15. Repealed.

Repealed by Laws, 2008, ch. 561, § 26, effective July 1, 2008.

§ 41-39-15. [Laws, 1987, ch. 433; Laws, 1988, ch. 355; Laws, 1993, ch. 423, § 1; Laws, 1998, ch. 540, § 1; Laws, 2005, ch. 472, § 2; Laws, 2007, ch. 450, § 1, eff from and after June 30, 2007.]

Editor's Note — Former § 41-39-15 was entitled: "Identification of potential organ and tissue donors; protocol; removal of organs for transplantation; notification of medical examiner if deceased patient is subject of medical-legal death investigation; performance improvement record reviews; out of state shipments; civil liability; gifts to medical schools; organ donation made by will, durable power of attorney, living will or under Anatomical Gift Law supersedes decision made by family of donor."

For present similar provisions, see §§ 41-39-101 et seq.

THE ANATOMICAL GIFT LAW [REPEALED]

SEC.

41-39-31 through 41-39-53. [Repealed]

§§ 41-39-31 through 41-39-53. [Repealed].

Repealed by Laws, 2008, ch. 561, § 26, effective July 1, 2008.

§ 41-39-31. [Codes, 1942, § 278.3-08; Laws, 1970, ch. 413, § 8, eff from and after passage (approved April 6, 1970).]

§ 41-39-33. [Codes, 1942, § 278.3-02; Laws, 1970, ch. 413, § 2; Laws, 1975, ch. 328, § 2; Laws, 1980, ch. 403, § 2, eff from and after July 1, 1980.]

§ 41-39-35. [Codes, 1942, § 278.3-01; Laws, 1970, ch. 413, § 1; Laws, 1976, ch. 406, § 2, eff from and after July 1, 1976.]

§ 41-39-37. [Codes, 1942, § 278.3-03; Laws, 1970, ch. 413, § 3; Laws, 1980, ch. 403, § 3, eff from and after July 1, 1980.]

§ 41-39-39. [Codes, 1942, § 278.3-04; Laws, 1970, ch. 413, § 4; Laws, 1975, ch. 328, § 3; Laws, 1980, ch. 403, § 4, eff from and after July 1, 1980.]

§ 41-39-41. [Codes, 1942, § 278.3-05; Laws, 1970, ch. 413, § 5, eff from and after passage (approved April 6, 1970).]

§ 41-39-43. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-45. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-47. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-49. [Codes, 1942, § 278.3-06; Laws, 1970, ch. 413, § 6, eff from and after passage (approved April 6, 1970).]

§ 41-39-51. [Codes, 1942, § 278.3-07; Laws, 1970, ch. 413, § 7, eff from and after passage (approved April 6, 1970).]

§ 41-39-53. [Laws, 1974, ch. 385, eff from and after passage (approved March 21, 1974); Laws, 1998, ch. 540, § 2, eff from and after May 1, 1998.]

Editor's Note — Former §§ 41-39-15 through 41-39-53 were entitled: "The Anatomical Gift Law."

For present similar provisions, see the Revised Mississippi Uniform Anatomical Gift Act, codified as §§ 41-39-101 et seq.

REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT (UAGA)

SEC.

- 41-39-101. Short title [Repealed effective July 1, 2012].
- 41-39-103. Definitions [Repealed effective July 1, 2012].
- 41-39-105. Applicability [Repealed effective July 1, 2012].
- 41-39-107. Who may make anatomical gift before donor's death [Repealed effective July 1, 2012].
- 41-39-109. Manner of making anatomical gift before donor's death [Repealed effective July 1, 2012].
- 41-39-111. Amending or revoking anatomical gift before donor's death [Repealed effective July 1, 2012].
- 41-39-113. Refusal to make anatomical gift; effect of refusal [Repealed effective July 1, 2012].
- 41-39-115. Preclusive effect of anatomical gift, amendment, or revocation [Repealed effective July 1, 2012].
- 41-39-117. Who may make anatomical gift of decedent's body or part [Repealed effective July 1, 2012].
- 41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part [Repealed effective July 1, 2012].
- 41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift [Repealed effective July 1, 2012].
- 41-39-123. Search and notification [Repealed effective July 1, 2012].
- 41-39-125. Delivery of document of gift not required; right to examine [Repealed effective July 1, 2012].
- 41-39-127. Rights and duties of procurement organization and others [Repealed effective July 1, 2012].
- 41-39-129. Coordination of procurement and use [Repealed effective July 1, 2012].
- 41-39-131. Sale or purchase of parts prohibited [Repealed effective July 1, 2012].
- 41-39-133. Other prohibited acts [Repealed effective July 1, 2012].
- 41-39-135. Immunity [Repealed effective July 1, 2012].
- 41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity [Repealed effective July 1, 2012].
- 41-39-139. Donor registry [Repealed effective July 1, 2012].

- 41-39-141. Effect of anatomical gift on advance health-care directive [Repealed effective July 1, 2012].
- 41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation [Repealed effective July 1, 2012].
- 41-39-145. Uniformity of application and construction [Repealed effective July 1, 2012].
- 41-39-147. Relation to electronic signatures in global and national commerce act [Repealed effective July 1, 2012].
- 41-39-149. Repealer.

§ 41-39-101. Short title [Repealed effective July 1, 2012].

Sections 41-39-101 through 41-39-149 may be cited as the Revised Mississippi Uniform Anatomical Gift Act (UAGA).

SOURCES: Laws, 2008, ch. 561, § 1, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

Comparable Laws from other States — Alabama Code Annotated, §§ 22-19-160 et seq.

Arkansas Code Annotated §§ 20-17-1201 et seq.

Florida Annotated Statutes §§ 765.510 et seq.

Official Code of Georgia Annotated, §§ 765.510 et seq.

Louisiana Revised Statutes, §§ 17:2351 et seq.

North Carolina General Statutes, §§ 130A-412.3 et seq.

South Carolina Code Annotated, §§ 44-43-310 et seq.

Tennessee Code Annotated, §§ 68-30-101 et seq.

Virginia Code Annotated, §§ 32.1-291.1 et seq.

§ 41-39-103. Definitions [Repealed effective July 1, 2012].

In Sections 41-39-101 through 41-39-149:

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Agent" means an individual:

(A) Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than Sections 41-39-101 through 41-39-149, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The

term does not include a person to which an anatomical gift could pass under Section 41-39-121.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the Mississippi Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the Mississippi Department of Public Safety.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death, Glasgow Coma Scale of five (5) or less, and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted.

(25) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Refusal” means a record created under Section 41-39-113 that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part.

(27) “Sign” means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(28) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

SOURCES: Laws, 2008, ch. 561, § 2, eff from and after July 1, 2008.

Editor’s Note — For repeal of this section, see § 41-39-149.

§ 41-39-105. Applicability [Repealed effective July 1, 2012].

Sections 41-39-101 through 41-39-149 apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

SOURCES: Laws, 2008, ch. 561, § 3, eff from and after July 1, 2008.

Editor’s Note — For repeal of this section, see § 41-39-149.

§ 41-39-107. Who may make anatomical gift before donor's death [Repealed effective July 1, 2012].

Subject to Section 41-39-115, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 41-39-109 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(A) Emancipated; or

(B) Authorized under state law to apply for a driver's license because the donor is at least eighteen (18) years of age;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian.

SOURCES: Laws, 2008, ch. 561, § 4, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-109. Manner of making anatomical gift before donor's death [Repealed effective July 1, 2012].

(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) In a will;

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or

(4) As provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under Section 41-39-107 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death

whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

SOURCES: Laws, 2008, ch. 561, § 5, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-111. Amending or revoking anatomical gift before donor's death [Repealed effective July 1, 2012].

(a) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subsection (a)(1)(C) must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

SOURCES: Laws, 2008, ch. 561, § 6, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-113. Refusal to make anatomical gift; effect of refusal [Repealed effective July 1, 2012].

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.

(b) A record signed pursuant to subsection (a) (1) (B) must:

(1) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in paragraph (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) for making a refusal;

(2) By subsequently making an anatomical gift pursuant to Section 41-39-109 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 41-39-115(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

SOURCES: Laws, 2008, ch. 561, § 7, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-115. Preclusive effect of anatomical gift, amendment, or revocation [Repealed effective July 1, 2012].

(a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an anatomical gift of the donor's body or part under Section 41-39-111.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 41-39-111 is not a refusal and does not bar another person specified in Section 41-39-107 or 41-39-117 from making an anatomical gift of the donor's body or part under Section 41-39-109 or 41-39-119.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an

anatomical gift of the donor's body or part under Section 41-39-111, another person may not make, amend, or revoke the gift of the donor's body or part under Section 41-39-119.

(d) A revocation of an anatomical gift of a donor's body or part under Section 41-39-111 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 41-39-109 or 41-39-119.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part for one or more of the purposes set forth in Section 41-39-107 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 41-39-109 or 41-39-119.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

SOURCES: Laws, 2008, ch. 561, § 8, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-117. Who may make anatomical gift of decedent's body or part [Repealed effective July 1, 2012].

(a) Subject to subsections (b) and (c) and unless barred by Section 41-39-113 or 41-39-115, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under Section 41-39-107(2) immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 41-39-121 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

SOURCES: Laws, 2008, ch. 561, § 9, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part [Repealed effective July 1, 2012].

(a) A person authorized to make an anatomical gift under Section 41-39-117 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under Section 41-39-117 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under Section 41-39-117 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

SOURCES: Laws, 2008, ch. 561, § 10, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift [Repealed effective July 1, 2012].

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) Subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c), if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 41-39-109 or 41-39-119 or if the person knows that the decedent made a refusal under Section 41-39-113 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2), nothing in Sections 41-39-101 through 41-39-149 affects the allocation of organs for transplantation or therapy.

SOURCES: Laws, 2008, ch. 561, § 11, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-123. Search and notification [Repealed effective July 1, 2012].

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, fire fighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

SOURCES: Laws, 2008, ch. 561, § 12, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-125. Delivery of document of gift not required; right to examine [Repealed effective July 1, 2012].

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 41-39-121.

SOURCES: Laws, 2008, ch. 561, § 13, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-127. Rights and duties of procurement organization and others [Repealed effective July 1, 2012].

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Mississippi Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Mississippi Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. The organ procurement organizations, tissue bank, or eye bank, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor's organs. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. The procurement organization representative shall initiate the consent process with reasonable discretion and sensitivity to the family's circumstances, values and beliefs.

(d) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, at any time after a donor's death, the person to which a part passes under Section 41-39-121 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in Section 41-39-117 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 41-39-121(i) and 41-39-143, the rights of the person to which a part passes under Section 41-39-121 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Sections 41-39-101 through 41-39-149, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 41-39-121, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

SOURCES: Laws, 2008, ch. 561, § 14, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-129. Coordination of procurement and use [Repealed effective July 1, 2012].

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

SOURCES: Laws, 2008, ch. 561, § 15, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-131. Sale or purchase of parts prohibited [Repealed effective July 1, 2012].

(a) Except as otherwise provided in subsection (b), a person that, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the

individual's death commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars (\$50,000.00) or imprisonment not exceeding five (5) years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

SOURCES: Laws, 2008, ch. 561, § 16, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-39-133. Other prohibited acts [Repealed effective July 1, 2012].

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars (\$50,000.00) or imprisonment not exceeding five (5) years, or both.

SOURCES: Laws, 2008, ch. 561, § 17, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-39-135. Immunity [Repealed effective July 1, 2012].

(a) Any person who, in good faith and acting in reliance upon and authorization made under the provisions of Sections 41-39-101 through 41-39-149 and without notice of revocation thereof, takes possession of, performs surgical operations upon, removes tissue, substances or parts from the human body, or refuses such a gift, and any person who unknowingly fails to carry out the wishes of the donor according to the provisions of Sections 41-39-101 through 41-39-149 shall not be liable for damages in a civil action brought against him for that act.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under Sections 41-39-101 through 41-39-149, a person may rely upon representations of an individual listed in Section 41-39-117(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

SOURCES: Laws, 2008, ch. 561, § 18, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity [Repealed effective July 1, 2012].

(a) A document of gift is valid if executed in accordance with:

(1) Sections 41-39-101 through 41-39-149;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

SOURCES: Laws, 2008, ch. 561, § 19, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-139. Donor registry [Repealed effective July 1, 2012].

(a) The Mississippi Department of Public Safety may establish or contract for the establishment of a donor registry.

(b) The Mississippi Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(c) A donor registry must:

(1) Allow a donor or other person authorized under Section 41-39-107 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) Be accessible for purposes of paragraphs (1) and (2) seven (7) days a week on a twenty-four-hour basis.

(d) Except as otherwise provided in subsection (f), personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(e) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (c) and (d).

(f) At the time that a person is renewing his or her driver's license, the Department of Public Safety shall ask the person if he or she would like to be a donor. If the answer is yes, the department shall inform the prospective donor that his or her decision to be a donor cannot be revoked, changed or contested after his or her death by the donor's next of kin or by any other person, and shall ask the person if he or she desires information about the person's decision to be a donor to be sent to another person or persons. If the answer is yes, the department shall obtain the name and mailing address of the person or persons designated by the prospective donor, and the donor registry shall send the information about the prospective donor's decision to the designated person or persons as requested.

SOURCES: Laws, 2008, ch. 561, § 20, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-141. Effect of anatomical gift on advance health-care directive [Repealed effective July 1, 2012].

(a) In this section:

(1) "Advance health-care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health-care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than Sections 41-39-101 through 41-39-149 to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 41-39-117. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or

withdrawing the measures is not contraindicated by appropriate end-of-life care.

SOURCES: Laws, 2008, ch. 561, § 21, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation [Repealed effective July 1, 2012].

(a) If the deceased patient is medically suitable to be an organ and/or tissue donor, as determined by the procurement organization, and the donor and/or family has authorized the donation and transplantation, the donor's organs and/or tissues shall be removed for the purpose of donation and transplantation by the organ procurement organization, in accordance with subsection (b) of this section.

(b) If the deceased patient is the subject of a medical-legal death investigation, the procurement organization shall immediately notify the appropriate medical examiner that the deceased patient is medically suitable to be an organ and/or tissue donor. If the medical examiner determines that examination, analysis or autopsy of the organs and/or tissue is necessary for the medical examiner's investigation, the medical examiner may be present while the organs and/or tissues are removed for the purpose of transplantation. The physician, surgeon or technician removing the organs and/or tissues shall file with the medical examiner a report detailing the donation, which shall become part of the medical examiner's report. When requested by the medical examiner, the report shall include a biopsy or medically approved sample, as specified by the medical examiner, from the donated organs and/or tissues.

(c) In a medical-legal death investigation, decisions about organ and/or tissue donation and transplantation shall be made in accordance with a protocol established and agreed upon by majority vote of procurement organization, a certified state pathologist who shall be appointed by the Mississippi Commissioner of Public Safety, a representative from the University of Mississippi Medical Center, a representative from the Mississippi Coroners Association, an organ recipient who shall be appointed by the Governor, the Director of the Mississippi Bureau of Investigation of the Mississippi Department of Public Safety, and a representative of the Mississippi Prosecutor's Association appointed by the Attorney General. The protocol shall be established so as to maximize the total number of organs and/or tissues available for donation and transplantation. Organs and/or tissues designated by virtue of this protocol shall be recovered. The protocol shall be reviewed and evaluated on an annual basis.

SOURCES: Laws, 2008, ch. 561, § 22, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-145. Uniformity of application and construction [Repealed effective July 1, 2012].

In applying and construing Sections 41-39-101 through 41-39-149, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2008, ch. 561, § 23, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-147. Relation to electronic signatures in global and national commerce act [Repealed effective July 1, 2012].

Sections 41-39-101 through 41-39-149 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but do not modify, limit or supersede Section 101(a) of that act, 15 USCS Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2008, ch. 561, § 24, eff from and after July 1, 2008.

Editor's Note — For repeal of this section, see § 41-39-149.

§ 41-39-149. Repealer.

Sections 41-39-101 through 41-39-147 shall stand repealed on July 1, 2012.

SOURCES: Laws, 2008, ch. 561, § 25, eff from and after July 1, 2008.

CHAPTER 41

Surgical or Medical Procedures; Consents

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IN GENERAL

SEC.

- 41-41-1. Blood banking and transfusion procedures constitute services rather than sales; maximum usable life span of blood.
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§ 41-41-1. Blood banking and transfusion procedures constitute services rather than sales; maximum usable life span of blood.

The procurement, processing, storage, distribution and/or use of whole blood, plasma, blood products and blood derivatives, human tissue, organs or bones for the purpose of injecting, transfusing, transplanting or transferring the same or any of them into the human body for all purposes whatsoever constitutes the rendering of a service by every person participating therein, whether or not any remuneration is paid therefor, and does not constitute a sale. The maximum usable life span or shelf life for human blood preserved in citrate phosphate dextrose shall be governed by federal regulations promulgated and adopted by the Food and Drug Administration.

SOURCES: Codes, 1942, § 7129-71; Laws, 1966, ch. 475, § 1; Laws, 1975, ch. 334; Laws, 1980, ch. 382; Laws, 1987, ch. 401, eff from and after July 1, 1987.

Cross References — Definitions applicable to chapter, see § 41-41-203.

RESEARCH REFERENCES

ALR. Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion. 20 A.L.R.4th 136.

Liability of blood supplier or donor for injury or death resulting from blood transfusion. 24 A.L.R.4th 508.

Discovery of identity of blood donor. 56 A.L.R.4th 755.

Products liability: what is an “unavoidably unsafe” product. 70 A.L.R.4th 16.

Validity, construction, and application of blood shield statutes. 75 A.L.R.5th 229.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums § 35.

37 Am. Jur. Proof of Facts 2d 1, Hepatitis from Blood Transfusion.

2 Am Law Prod Liab 3d, Implied Warranties § 20:3.

3 Am Law Prod Liab 3d, Services § 37:24.

6 Am Law Prod Liab 3d, Health and Medical Appliances, Equipment, and Supplies § 91:6.

§ 41-41-3. Consent for surgical or medical treatment or procedures on unemancipated minors.

(1) It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons who is reasonably available, in descending order of priority, is authorized and empowered to consent on behalf of an unemancipated minor, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

- (a) The minor’s guardian or custodian.
- (b) The minor’s parent.
- (c) An adult brother or sister of the minor.
- (d) The minor’s grandparent.

(2) If none of the individuals eligible to act under subsection (1) is reasonably available, an adult who has exhibited special care and concern for the minor and who is reasonably available may act; the adult shall communicate the assumption of authority as promptly as practicable to the individuals specified in subsection (1) who can be readily contacted.

(3) Any female, regardless of age or marital status, is empowered to give consent for herself in connection with pregnancy or childbirth.

SOURCES: Codes, 1942, § 7129-81; Laws, 1966, ch. 478, § 1; Laws, 1984, ch. 347; Laws, 1998, ch. 542, § 17, eff from and after July 1, 1998.

Editor’s Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

JUDICIAL DECISIONS

1. In general.
2. Consent by grandmother.
3. Insufficient reason for custody change.

1. In general.

Only a child or his or her guardian may make a claim based on the violation of a child's medical privileges. *Alexander v. State*, 811 So. 2d 272 (Miss. Ct. App. 2001).

No physician may perform any procedure on a patient no matter how slight or well intentioned without that patient's informed consent, and violation of this rule constitutes a battery. *Fox v. Smith*, 594 So. 2d 596 (Miss. 1992).

The informed consent rule applicable to medical practitioners reflects Mississippi's "respect for the individual's right to be free from unwanted bodily intrusions no matter how well intentioned," which is rooted in the right to privacy recognized by state common law and Article 3, § 32 of the Mississippi constitution. *Fox v. Smith*, 594 So. 2d 596 (Miss. 1992).

In order to recover on the issue of informed consent, the patient must show that the doctor failed to disclose sufficient information about the proposed operation or procedure to form basis for informed consent, and there must be a causal connection between the breach of the duty by the doctor and the injuries to the patient. *Latham v. Hayes*, 495 So. 2d 453 (Miss. 1986).

Information necessary for patient to reach an informed consent must include known risks of a procedure or operation, which would be material to a prudent patient in determining whether or not to undergo suggested treatment. *Latham v. Hayes*, 495 So. 2d 453 (Miss. 1986).

In a medical malpractice action, plaintiffs could not prevail under the doctrine of informed consent in absence of showing,

by expert testimony or otherwise, what standard of care the physician was held to when inserting IUDs and explaining the risks involved. *Marshall v. Clinic for Women*, 490 So. 2d 861 (Miss. 1986).

A physician is under a duty in some circumstances to warn his patient of the known risks of proposed treatment or surgery, so that the patient will be in a position to make an intelligent decision as to whether he will submit to such treatment or surgery. *Cole v. Wiggins*, 487 So. 2d 203 (Miss. 1986).

2. Consent by grandmother.

In a prosecution for various sex offenses committed on a six-year-old girl, the court rejected the defendant's claim that all of the expert testimony put on by the state should have been disregarded because the child's grandmother had no right to consent to the child's medical treatment since the mother was absent in accordance with the statute when the decision was made to take the child to see a doctor. *Alexander v. State*, 811 So. 2d 272 (Miss. Ct. App. 2001).

3. Insufficient reason for custody change.

Judge's actions, involving the issuance of an ex parte temporary change of child custody order, not only constituted willful misconduct in violation of the state constitution and various canons of the code of judicial conduct, but also violated state laws and rules; the order did not conform to Miss. Code Ann. § 43-21-301(4), a need for emergency medical care was insufficient reason to award temporary custody in light of Miss. Code Ann. § 41-41-3(1)(b), and the order was not mailed to all parties as required by Miss. Code Ann. § 43-21-111(5). *Miss. Comm'n on Judicial Performance v. Perdue*, 853 So. 2d 85 (Miss. 2003).

RESEARCH REFERENCES

ALR. Infant's liability for medical, dental, or hospital services. 53 A.L.R.4th 1249.

Medical practitioner's liability for treatment given child without parent's consent. 67 A.L.R.4th 511.

Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty. 74 A.L.R.4th 1099.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 21 A.L.R.5th 248.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 157 et seq., 180.

9A Am. Jur. Legal Forms 2d, Hospitals and Asylums §§ 136:71 et seq. (relationship with patients — consent to treatment).

9A Am. Jur. Legal Forms 2d, Infants §§ 144:15, 144:16 (consent by infant to

diagnosis or treatment — drug abuse, venereal disease).

15 Am. Jur. Legal Forms 2d, Physicians and Surgeons §§ 202:151 et seq. (consent to treatment).

13 Am. Jur. Pl & Pr Forms (Rev), Guardian and Ward, Forms 295 (petition or application — for authorization to proceed with kidney transplant — ward as donor); 296 (petition or application — for authorization for involuntary sterilization of female adult incompetent ward).

35 Am. Jur. Trials 637, Trial Report: Informed Consent to Brain Surgery.

CJS. 70 C.J.S., Physicians and Surgeons § 46.

Law Reviews. Flowers, Medical malpractice — informed consent gone awry. 8 Miss. C. L. Rev. 65, Fall, 1987.

Vitiello, Death With Dignity in Mississippi? An Analysis of Mississippi's Natural Death Act. 54 Miss L. J. 459, Sept.-Dec., 1984.

§ 41-41-5. Repealed.

Repealed by Laws, 1998, ch. 542, § 18, eff from and after July 1, 1998.
[Codes, 1942, § 7129-82; Laws, 1966, ch. 478, § 2]

Editor's Note — Former § 41-41-5 related to relationships included within the consent provisions of Sections 41-41-3 through 41-41-11 and to persons relying in good faith on representations by persons purporting to give consent.

§ 41-41-7. Implied consent to medical treatment where emergency exists.

In addition to any other instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures, suggested, recommended, prescribed or directed by a duly licensed physician, will be implied where an emergency exists if there has been no protest or refusal of consent by a person authorized and empowered to consent or, if so, there has been a subsequent change in the condition of the person affected that is material and morbid, and there is no one immediately available who is authorized, empowered, willing and capacitated to consent. For the purposes hereof, an emergency is defined as a situation wherein, in competent medical judgment, the proposed surgical or medical treatment or procedures are immediately or imminently necessary and any delay occasioned by an attempt to obtain a consent would reasonably jeopardize the life, health or limb of the person affected, or would reasonably result in disfigurement or impairment of faculties.

SOURCES: Codes, 1942, § 7129-83; Laws, 1966, ch. 478, § 3, eff from and after passage (approved May 25, 1966).

JUDICIAL DECISIONS

1. In general.
2. Jury instruction.

1. In general.

Miss. Code Ann. § 41-41-7 states that consent will be implied in emergency situations in addition to any other instances in which a consent is excused or implied at law; thus, in Mississippi, consent to a medical procedure may be implied when a patient is fully informed of the known risks that would be material to a prudent patient in determining whether to undergo the proposed treatment. Accord-

ingly, for consent, no emergency need exist as long as the patient is informed that the procedure is a known risk of the proposed treatment. *Griffin v. McKenney*, 877 So. 2d 425 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67 (Miss. 2004).

2. Jury instruction.

Defendant's informed consent instruction in a medical malpractice case did not misstate the law, and it was supported by the evidence. *Griffin v. McKenney*, 877 So. 2d 425 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 67 (Miss. 2004).

RESEARCH REFERENCES

ALR. Hospital's liability as to diagnosis and care of patients brought to emergency ward. 72 A.L.R.2d 396.

Liability for injury or death allegedly caused by activities of hospital "rescue team". 64 A.L.R.4th 1200.

Medical practitioner's liability for treat-

ment given child without parent's consent. 67 A.L.R.4th 511.

Construction and application of "Good Samaritan" statutes. 68 A.L.R.4th 294.

Law Reviews. Flowers, Medical malpractice — informed consent gone awry. 8 Miss. C. L. Rev. 65, Fall, 1987.

§ 41-41-9. Court may consent to or order medical treatment; allocation of treatment expenses.

In addition to all other remedies available at law or in equity, any court having a clerk or any judge thereof may, in either term time or vacation, upon presentation of the written advice or certificate of one or more duly licensed physicians that there is an immediate or imminent necessity for medical or surgical treatment or procedures for an adult of unsound mind or a minor, summarily consent to or order and direct such surgical or medical treatment or procedures for the adult of unsound mind or minor, provided that:

(a)(i) The surrogate for such adult of unsound mind or minor has refused or declined to do so and there is no other person known to be immediately available who is so authorized, empowered, willing or capacitated to so consent; or

(ii) There is no person available to be designated as a surrogate; and

(b) There has been filed with or there is presented to such court or judge an application for a writ of habeas corpus as to such person, a pleading respecting the custody or care of such person, an application for appointment of a guardian or conservator for such person, a pleading seeking the adjudication of such person as a non compos mentis, drug addict, habitual drunkard or neglected child, or some other instrument or pleading otherwise

invoking the aid or jurisdiction of said court or judge or the state, as *parens patriae* or otherwise, concerning the welfare of such person. Any subsequent dismissal, nonsuit, removal, transfer, overruling or denial of such original application, instrument or pleading, or denial of jurisdiction of the court or judge over the subject matter or necessary parties, shall not retroactively revoke, rescind or invalidate any prior consent.

The reasonable expense of an adult of unsound mind or a minor in thus obtaining such surgical or medical treatment or procedures shall be borne by his estate or any person liable at law for his necessities or, if they are unable to pay, by the county of residence or settlement of the person receiving such surgical or medical care.

Upon request of the attending physician or other interested person, it shall be the duty of any district attorney or county attorney to give his assistance in the presentation of any such medical advice or certificate and in obtaining the consent or order of a judge or court of proper jurisdiction.

SOURCES: Laws, 1999, ch. 425, § 2, eff from and after passage (approved Mar. 18, 1999.)

Editor's Note — A prior § 41-41-9 [Laws, 1966, ch. 478, § 4] was repealed by Laws, 1998, ch. 542, § 18, eff from and after July 1, 1998. That section provided for court orders or judicial consent concerning medical treatments and procedures.

§ 41-41-11. Waiver of medical privilege.

Any person authorized and empowered to consent to surgical or medical treatment or procedures for himself or another may also waive the medical privilege for himself or the other person and consent to the disclosure of medical information and the making and delivery of copies of medical or hospital records. Any such waiver or consent shall survive the death of the person giving the same. No such waiver shall be needed for the cooperation with the furnishing of information to the State Department of Health, its representatives or employees in the discharge of their official duties. However, the State Department of Health shall not reveal the name of a patient with his case history without having first been authorized to do so by the patient, his personal representative, or legal heirs in case there be no personal representative.

SOURCES: Codes, 1942, § 7129-85; Laws, 1966, ch. 478, § 5; Laws, 1968, ch. 441, § 6; Laws, 1988, ch. 557, § 5, eff from and after July 1, 1988.

Cross References — Privileged communications, see § 13-1-21.

ATTORNEY GENERAL OPINIONS

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public

Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

RESEARCH REFERENCES

ALR. Waiver of evidentiary privilege by inadvertent disclosure — state law. 51 A.L.R.5th 603.

Am Jur. 9A Am. Jur. Legal Forms 2d, Hospitals and Asylums §§ 136:71 et seq. (relationship with patients — consent to treatment).

9A Am. Jur. Legal Forms 2d, Hospitals and Asylums §§ 136:91 et seq. (relationship with patient — refusal of treatment).

45 Am. Jur. Proof of Facts 2d 595, Pro-

tected Communication Between Physician and Patient.

46 Am. Jur. Proof of Facts 2d 373, Existence of Physician and Patient Relationship.

47 Am. Jur. Proof of Facts 2d 721, Psychotherapist and Patient Privilege.

32 Am. Jur. Trials 105, Unauthorized Disclosure of Confidential Patient Information.

§ 41-41-13. Physician or nurse practitioner treating minor for venereal disease need not obtain parental consent.

Any physician, duly licensed to practice medicine in the State of Mississippi, or any nurse practitioner, who, in the exercise of due care, renders medical care to a minor for treatment of a venereal disease is under no obligation to obtain the consent of a parent or guardian, as applicable, or to inform such parent or guardian of such treatment.

SOURCES: Codes, 1942, § 8893.7; Laws, 1971, ch. 307, § 1; Laws, 1995, ch. 344, § 4, eff from and after July 1, 1995.

Cross References — Venereal disease regulations, see §§ 41-23-27, 41-23-29 and 41-23-30.

RESEARCH REFERENCES

ALR. Malpractice: questions of consent in connection with treatment of genital or urinary organs. 89 A.L.R.3d 32.

§ 41-41-14. Physician treating minor for mental or emotional problems resulting from alcohol or drugs need not obtain parental consent.

(1) Any physician or psychologist duly licensed to practice medicine or psychology in the State of Mississippi, who in the exercise of due care consults with or prescribes medication for a minor at least fifteen (15) years of age for mental or emotional problems caused by or related to alcohol or drugs is under no obligation to obtain the consent of the spouse, parent or guardian of said minor, but said minor may consent to such treatment the same as if the minor had reached the age of majority.

(2) The licensed physician or psychologist may, but shall not be obligated to, inform the spouse, parent or guardian of a minor in the circumstances enumerated as to the treatment given or needed and the information may be given to the spouse, parent or guardian without the consent of the minor patient and over the express refusal of the minor patient.

(3) The parent, spouse or guardian shall not be financially liable for any such consultation unless and until they have consented to the same.

SOURCES: Laws, 1979, ch. 480, eff from and after July 1, 1979.

§ 41-41-15. Donations of blood by minors.

(1) The legal disabilities of any minor aged sixteen (16) years or older are removed for purposes of voluntarily donating blood, with or without remuneration therefor, to a licensed hospital, blood bank, community blood program, or other lawful activity engaged in processing and supplying human blood for transfusions and/or related medical purposes, as provided in this section.

(2) Any person who is sixteen (16) years of age or older may consent to the donation of his or her blood and to the penetration of such tissue necessary to accomplish the donation, if the person obtains written permission from the person's parent or guardian. The consent shall not be subject to deferments because of the minority of the person.

(3) Any person who is seventeen (17) years of age or older may consent to the donation of his or her blood and to the penetration of such tissue necessary to accomplish the donation. The consent shall not be subject to deferments because of the minority of the person, and parental authorization shall not be required to authorize the donation and penetration of tissue.

SOURCES: Codes, 1942, §§ 278.3-11, 278.3-12; Laws, 1972, ch. 333, § 1; ch. 362, § 1; Laws, 1976, ch. 386; Laws, 2009, ch. 551, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote (1); added (2); and made minor stylistic changes.

RESEARCH REFERENCES

ALR. Liability for injury or death from blood transfusion. 45 A.L.R.3d 1364.

§ 41-41-16. Health-care providers conducting tests for infectious diseases without consent of patient.

A hospital or physician, and employees of such hospital or physician, may conduct an acquired immune deficiency syndrome (AIDS)/human immunodeficiency virus (HIV) antibody test or appropriate tests for any other infectious diseases without specific consent for such tests if the hospital or physician determines that the test is necessary for diagnostic purposes to provide appropriate care or treatment to the person to be tested, or in order to protect the health and safety of other patients or persons providing care and treatment to the person to be tested. The person who is to be tested shall be informed of the nature of the test which is to be conducted.

SOURCES: Laws, 1991, ch. 455, § 1, eff from and after passage (approved March 29, 1991).

RESEARCH REFERENCES

ALR. Validity and Propriety under Circumstances, of Court-Ordered HIV Testing. 87 A.L.R.5th 631.

Damage action for HIV testing without consent of person tested. 77 A.L.R.5th 541.

§ 41-41-17. Authorized consent to participate in research conducted in accordance with federal law.

(1) Any adult, as defined in Section 41-41-203(a), Mississippi Code of 1972, or emancipated minor, as defined in Section 41-41-203(e), Mississippi Code of 1972, may consent to participate as a subject in research if that research is conducted in accordance with federal law (Title 45 CFR Part 46: Protection of Human Subjects).

(2) Unemancipated minors may participate as subjects in research, if that research is conducted in accordance with federal law, with the consent of a parent or a guardian, as defined in Section 41-41-203(f), Mississippi Code of 1972.

SOURCES: Laws, 2004, ch. 339, § 1, eff from and after July 1, 2004.

PERFORMANCE OF ABORTION; CONSENT

SEC.

- | | |
|-----------|--|
| 41-41-31. | Definitions. |
| 41-41-33. | Consent; written certification. |
| 41-41-34. | Performance of fetal ultrasound imaging and auscultation of fetal heart tone services required before abortion; patient to be offered opportunity to view ultrasound image and hear heartbeat; patient to sign certification form acknowledging being given that opportunity; physician to retain copy of signed certification form. |
| 41-41-35. | Duties of State Department of Health; printed materials. |
| 41-41-37. | Physician to inform woman of medical emergency. |
| 41-41-39. | Violation of provisions as misdemeanor. |
| 41-41-45. | Abortion prohibited; exceptions. |

§ 41-41-31. Definitions.

The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(b) "Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

(c) "Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

SOURCES: Laws, 1991, ch. 439, § 1, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References — Performance of abortions upon minors, see §§ 41-41-51 et seq. Uniform health care decisions act applicability, see § 41-41-227.

JUDICIAL DECISIONS

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters (anti-abortion groups, individuals, and coalition of anti-abortion groups) had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340, 127 L. Ed. 2d 688 (1994), on remand, 25 F.3d 1053 (7th Cir. Ill. 1994).

Regarding state abortion statute requiring woman's informed consent but dispensing with such requirement in event of medical emergency, provision defining medical emergency did not violate due process clause. A central holding of *Roe v. Wade*, that woman may choose abortion before fetus is viable and without undue interference from state, but that state has power to restrict abortions after fetal viability if restrictions contain exceptions for pregnancies which endanger woman's life or health, and that state has legitimate interest from outset in protecting health of pregnant woman and life of a fetus which may become child, should be retained and reaffirmed. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

RESEARCH REFERENCES

ALR. Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration — by operator of abortion clinic — against protestors — to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-33. Consent; written certification.

(1) No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) The woman is told the following by the physician who is to perform or induce the abortion or by the referring physician, orally and in person, at least twenty-four (24) hours before the abortion:

- (i) The name of the physician who will perform or induce the abortion;
- (ii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage and breast cancer, and the danger to subsequent pregnancies and infertility;

(iii) The probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(iv) The medical risks associated with carrying her child to term.

(b) The woman is informed, by the physician or his agent, orally and in person, at least twenty-four (24) hours before the abortion:

(i) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

(ii) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(iii) That there are available services provided by public and private agencies which provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices; and

(iv) That she has the right to review the printed materials described in Section 41-41-35(1)(a), (b) and (c). The physician or his agent shall orally inform the woman that those materials have been provided by the State of Mississippi and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view those materials, copies of them shall be furnished to her. The physician or his agent may disassociate himself or themselves from those materials, and may comment or refrain from comment on them as he chooses. The physician or his agent shall provide the woman with the printed materials described in Section 41-41-35(1)(d).

(c) The woman certifies in writing before the abortion that the information described in paragraphs (a) and (b) of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph (iv) of paragraph (b) of this section.

(d) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the written certification prescribed by this section.

(2) The State Department of Health shall enforce the provisions of Sections 41-41-31 through 41-41-39 at abortion facilities, as defined in Section 41-75-1.

SOURCES: Laws, 1991, ch. 439, § 2, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991); Laws, 1996, ch. 442, § 1, eff from and after July 1, 1996.

Cross References — Performance of abortions upon minors, see §§ 41-41-51 et seq.

JUDICIAL DECISIONS

1. In general.

Because the mandatory consultation and 24-hour delay ensures that a woman has given thoughtful consideration in deciding whether to obtain an abortion, § 41-41-33 does not create an undue burden and is therefore constitutional. *Pro-Choice Miss. v. Fordice*, 716 So. 2d 645 (Miss. 1998).

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340, 127 L. Ed. 2d 688 (1994), on remand, 25 F.3d 1053 (7th Cir. Ill. 1994).

A woman has the right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to choose to have an abortion before fetal viability and to obtain an abortion without undue interference from the state, because before viability, a state's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to a woman's effective right to elect the procedure. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Constitutional protection of a woman's decision to terminate her pregnancy derives from the due process clause of the Federal Constitution's Fourteenth Amendment,

which prohibits states from depriving any person of liberty without due process of law, because (1) the due process clause applies to matters of substantive law as well as to matters of procedure, and thus, all fundamental rights comprised within the term "liberty" are protected by the Federal Constitution from invasion by the states; (2) neither the Bill of Rights nor the specific practices of the states at the time of the adoption of the Fourteenth Amendment mark the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects; (3) the full scope of the liberty guaranteed by the due process clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution, and this liberty is a rational continuum which, broadly speaking, includes freedom from all substantial arbitrary impositions and purposeless restraints, and which also recognizes that certain interests require particularly careful scrutiny of the state needs asserted to justify the abridgement of the interests; (4) the Constitution places limits on a state's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity; and (5) the Constitution protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education, and these matters are central to the liberty protected by the Fourteenth Amendment. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

The United States Supreme Court will reject the trimester framework established in *Roe v. Wade* (1973) 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705, to determine the validity, under the Federal Constitution, of state regulation of abortion, under which framework (1) almost no regulation is permitted during the first trimester of pregnancy, (2) regulations de-

signed to protect a pregnant woman's health, but not to further a state's interest in potential life, are permitted during the second trimester, and (3) during the third trimester, when the fetus is viable, prohibitions are permitted provided that the life or health of the mother is not at stake, where (1) three Justices of the Supreme Court express the view that (a) the trimester framework is not part of the essential holding of *Roe v. Wade*, (b) a logical reading of the central holding in *Roe v. Wade*, and a necessary reconciliation of a woman's liberty protected under the due process clause of the Federal Constitution's Fourteenth Amendment with the interest of a state in promoting prenatal life, require abandonment of the trimester framework as a rigid prohibition on all previability regulation aimed at the protection of fetal life, and (c) the undue burden standard, under which standard a state law that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus is invalid under the Fourteenth Amendment, is the appropriate means of reconciling a state's interest with a woman's constitutionally protected liberty; and (2) four Justices express the view that *Roe v. Wade* was wrongly decided and should be overruled. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

The United States Supreme Court will hold that a state statute's provision concerning a pregnant woman's informed consent to an abortion, which provision requires that except in a medical emergency, (1) at least 24 hours before performing an abortion, a physician must inform the woman of the nature of the abortion procedure, the health risks of the abortion and of childbirth, and the probable gestational age of the unborn child, (2) the physician or a qualified nonphysician must inform the woman of the availability of printed materials published by the state describing the fetus and providing information about medical assistance for childbirth, information about child support from the father, and a list of agencies which provide adoption and other services as alternatives to abortion, and (3) the woman must certify in writing

that she has been informed of the availability of these materials, and that if she has chosen to view the materials, she has been provided with them, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where (1) three Justices of the Supreme Court express the view that the provision does not place an undue burden upon a woman's right to decide whether to terminate a pregnancy; and (2) four Justices express the view that (a) the informed consent provision is rationally related to the state's interest in assuring that a woman's consent to an abortion be fully informed, and (b) the 24-hour waiting period reasonably furthers the state's legitimate interests. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

A state abortion statute's provision concerning spousal notice, which provision prohibits a physician from performing an abortion on a married woman without receiving a signed statement from the woman that she has notified her spouse that she is about to undergo an abortion, unless the woman provides an alternative signed statement certifying that (1) her husband is not the man who impregnated her, (2) her husband cannot be located, (3) her pregnancy is the result of a spousal sexual assault which she has reported, or (4) she believes that notifying her husband will cause him or someone else to inflict bodily injury upon her, is an undue burden on a woman's right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to undergo an abortion, and thus is unconstitutional, because (1) the vast majority of women notify their male partners of the decision to obtain an abortion; (2) in many cases in which married women do not notify their husbands, the pregnancy is the result of an extramarital affair; (3) when the husband is the father, the primary reason women do not notify their husbands is that the husband and wife are experiencing marital difficulties, often accompanied by incidents of violence; (4) victims of a spousal sexual assault are extremely reluctant to report the assault to the government, and thus the spousal notification requirement imposes a substantial obstacle that is likely to prevent a

significant number of women from procuring an abortion as surely as if the state had outlawed abortion in all cases; (5) the spousal notice provision embodies a view of marriage that is repugnant to the modern understanding of marriage and of the nature of the rights secured by the Constitution; (6) women do not lose their constitutionally protected liberty when they marry; (7) state regulation with respect to the child a woman is carrying has a far greater impact on the mother's liberty than on the father's liberty, and the effect of state regulation on a woman's protected liberty is doubly deserving of scrutiny in such a case, as the state has touched upon not only the private sphere of the family, but also the bodily integrity of the pregnant woman; (8) the right of privacy includes the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters that so fundamentally affect a person as does the decision whether to bear or beget a child; (9) the Constitution protects all individuals, male or female, married or unmarried, from unjustified state interference, even when the interference is employed for the supposed benefit of a member of the individual's family, including the individual's spouse; (10) the women most affected by a spousal notice requirement are those who most reasonably fear the consequences of notifying their husbands; and (11) a husband's interest in the life of the child his wife is carrying does not permit a state to empower him with an effective veto power over his wife's decision to procure an abortion. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Five members of Court expressed view that provision of state abortion statute requiring spousal notice violated due process clause by imposing undue burden on woman's abortion rights because notice requirement enabled husband to wield, in effect, veto over wife's decision. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the

activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), overruled on other grounds, *Planned Parenthood v. Miller*, 63 F.3d 1452 (8th Cir. S.D. 1995).

Provisions of state statute prohibiting use of public facilities and employees to perform or assist abortions not necessary to save mother's life were not unconstitutional and did not contravene Supreme Court's abortion decisions; question as to constitutionality of provision prohibiting public funding for encouraging or counseling woman to have abortion not necessary to save her life, was moot. *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989).

An individual Justice of the United States Supreme Court, as Circuit Justice, will deny an application, filed by the natural father of an unborn child, for an order enjoining the mother from aborting the child, where (1) the state trial court in which the proceedings were initiated has found that even if the United States Supreme Court's decision in *Planned Parenthood v. Missouri v. Danforth* (1976) 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831, permits the balancing of the father's and the mother's interests, the mother's interests would outweigh the father's, since (a) the father and mother are not married, (b) there is no suggestion that they will ever reunite, (c) the father is able to father other children and has other children, and (d) the father has shown substantial instability in his marital and romantic life, (2) the state's highest court has denied a petition for stay in reliance upon (a) the

presumption of validity accorded trial court judgments, (b) the Danforth decision, and (c) the insufficient likelihood that the father will prevail on the merits, (3) the Justice has serious doubts concerning the availability of a federal remedy for the father's claim, in view of the fact that the mother's decision to obtain an abortion can be carried out without any action on the part of the state or its governmental subdivisions, (4) a delay in implementing the mother's decision might increase the risk of physical or emotional harm to her, and (5) the Justice has substantial doubt whether there has yet been a final decision by the state's highest court that would provide a basis for appellate jurisdiction in the United States Supreme Court. *Doe v. Smith*, 486 U.S. 1308, 108 S. Ct. 2136, 100 L. Ed. 2d 909 (1988).

The constitutional dimensions of a woman's right to end her pregnancy are entitled to judicial recognition; a woman's decision, with the guidance of her physician and within certain limits, as to whether to end her pregnancy, is personal and intimate, properly private, and basic to individual dignity and autonomy; a woman's right to make that choice freely is fundamental. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

The states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies, by enacting statutory provisions which wholly subordinate constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, is hers to make. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

A requirement that a woman gave what is truly a voluntary and informed consent to an abortion, as a general proposition, is proper and not unconstitutional, but the state may not require information designed

to influence the woman's informed choice between abortion or childbirth; state provisions requiring the delivery of specific information are unconstitutional where (1) the information required seems to be an attempt to wedge the state's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician, and (2) under the guise of informed consent, the provisions require the dissemination of information that is not relevant to such consent, and thus advance no legitimate state interest. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24-hour waiting period, and disposal of fetal remains are unconstitutional. *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), on remand, 604 F. Supp. 1268 (N.D. Ohio 1984), on remand, 604 F. Supp. 1275 (N.D. Ohio 1985), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

A woman has a fundamental right to make the personal choice whether or not to terminate her pregnancy. *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), on remand, 604 F. Supp. 1268 (N.D. Ohio 1984), on remand, 604 F. Supp. 1275 (N.D. Ohio 1985), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

A woman has at least an equal right to choose to carry her fetus to term as to choose to abort it. *Maher v. Roe*, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977).

State may not impose restrictions or regulations governing the medical judgment of a pregnant woman's attending physician with respect to the termination of her pregnancy. *Planned Parenthood v. Danforth*, 428 U.S. 52, 96 S. Ct. 2831, 49

L. Ed. 2d 788 (1976), overruled on other grounds, *Oliverson v. West Valley City*, 1994 U.S. Dist. LEXIS 19383 (D. Utah Nov. 10, 1994).

Prior to the end of the first trimester of pregnancy, an attending physician, in consultation with his patient, is free to determine, without regulation by the state, that in his medical judgment the patient's pregnancy should be terminated; and if such a decision is reached, the physician's judgment

may be effectuated by an abortion free of interference by the state. *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), concurring opinion, 410 U.S. 179, 93 S. Ct. 755, 35 L. Ed. 2d 147 (1973), concurring opinion, 410 U.S. 179, 93 S. Ct. 756, 35 L. Ed. 2d 147 (1973), dissenting opinion, 410 U.S. 179, 93 S. Ct. 762, 35 L. Ed. 2d 147 (1973), reh'g denied, 410 U.S. 959, 93 S. Ct. 1409, 35 L. Ed. 2d 694 (1973).

ATTORNEY GENERAL OPINIONS

A woman may be told the information required in Section 41-41-33(a) through a

telephone conference. Thompson, May 5, 1995, A.G. Op. #95-0318.

RESEARCH REFERENCES

ALR. Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or dec-

laration — gynecologist's prescription of drug to pregnant woman — forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration — by operator of abortion clinic — against protestors — to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-34. Performance of fetal ultrasound imaging and auscultation of fetal heart tone services required before abortion; patient to be offered opportunity to view ultrasound image and hear heartbeat; patient to sign certification form acknowledging being given that opportunity; physician to retain copy of signed certification form.

(1) Before the performance of an abortion, as defined in Section 41-41-45, the physician who is to perform the abortion, or a qualified person assisting the physician, shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the patient undergoing the abortion;

(b) Offer to provide the patient with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible;

(c) Offer to provide the patient with a physical picture of the ultrasound image of the unborn child;

(d) Obtain the patient's signature on a certification form stating that the patient has been given the opportunity to view the active ultrasound image and hear the heartbeat of the unborn child if the heartbeat is audible, and that she has been offered a physical picture of the ultrasound image; and

(e) Retain a copy of the signed certification form in the patient's medical record.

(2) The State Department of Health shall enforce the requirements of this section.

(3) An ultrasound image must be of a quality consistent with standard medical practice in the community, shall contain the dimensions of the unborn child and shall accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child.

SOURCES: Laws, 2007, ch. 441, § 3, eff from and after July 1, 2007.

Editor's Note — Laws of 2007, ch. 441, §§ 5 and 6 provide:

"SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

"(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

"(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

"(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

"SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional."

§ 41-41-35. Duties of State Department of Health; printed materials.

(1) The State Department of Health shall cause to be published in English within sixty (60) days after July 1, 1991, the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the Department of Health, printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival. The materials shall include color pictures representing the development of the child at two-week gestational increments. These pictures must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(c) Materials that include the information described in subparagraphs (ii) and (iv) of paragraph (1)(a) of Section 41-41-33 and in subparagraphs (i), (ii) and (iii) of paragraph (1)(b) of Section 41-41-33.

(d) Materials designed to inform the woman of pregnancy prevention methods for females and males, which materials shall describe each method in detail and include pictures or diagrams that illustrate the proper usage of each method.

(2) The materials shall be printed in a typeface large enough to be clearly legible.

(3) The materials required under this section shall be available at no cost from the Department of Health upon request and in appropriate number to any person, facility or hospital.

(4) The Department of Health shall review the printed materials required by subsection (1) of this section on an annual basis in order to determine if any changes are needed to be made to the contents of the materials, and shall promulgate any rules and regulations necessary for considering and making such changes.

SOURCES: Laws, 1991, ch. 439, § 3, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991); Laws, 1996, ch. 442, § 2, eff from and after July 1, 1996.

JUDICIAL DECISIONS

1. In general.

Health and Human Service regulations limiting ability of Federal Title X fund recipients to engage to abortion related activities were permissible construction of Title X, did not impose viewpoint-discriminatory conditions on government subsidy so as to violate First Amendment free speech rights of either private health care organizations that received Title X funds, their staffs, or their patients, and did not violate women's rights under due process clause of Fifth Amendment. *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), overruled on other grounds, *Planned Parenthood v. Miller*, 63 F.3d 1452 (8th Cir. S.D. 1995).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), overruled on other grounds, *Planned Parenthood v. Miller*, 63 F.3d 1452 (8th Cir. S.D. 1995).

State statutory provisions which make it unlawful for any public employees within the scope of their employment to perform or assist an abortion not necessary to save the life of the mother and which prohibit the use of any public facility for the purpose of performing or assisting an abortion not necessary to save the life of the mother do not contravene the abortion decisions of the United States Supreme Court, because (1) the state's

decision to use public facilities and staff to encourage childbirth over abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy and leaves a pregnant woman with the same choices as if the state had chosen not to operate any public hospitals at all, (2) such provisions restrict a woman's ability to obtain an abortion only to the extent that she chooses to use a physician affiliated with a public hospital, which circumstance is more easily remedied, and thus is considerably less burdensome, than indigency, which may make it difficult, and in some cases, perhaps impossible, for some women to have abortions without public funding, (3) if the state may make a value judgment favoring childbirth over abortion and implement such judgment by the allocation of public funds, it likewise may do so through the allocation of other public resources, such as hospitals and medical staff, and (4) nothing in the Federal Constitution requires states to enter or remain in the business of performing abortions, nor do private physicians and their patients have some kind of constitutional right of access to public facilities for the performance of abortions, and a state need not commit any resources to facilitating abortions even if it can turn a profit by doing so. *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989).

The states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies, by enacting statutory provisions which wholly subordinate constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, is hers to make. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

When issue involves policy choices as sensitive as those implicated by the public funding of nontherapeutic abortions, the

appropriate forum for their resolution in a democracy is the legislature. *Maier v. Roe*, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977).

RESEARCH REFERENCES

ALR. Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 A.L.R.4th 1166.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.2 (complaint, petition, or declaration — by operator of abortion clinic — against protestors — to enjoin illegal conduct in connection with picketing of abortion clinic).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-37. Physician to inform woman of medical emergency.

When a medical emergency compels the performance or induction of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

SOURCES: Laws, 1991, ch. 439, § 4, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References — Performance of abortions upon minors, see §§ 41-41-51 et seq.

JUDICIAL DECISIONS

1. In general.

Under the due process clause of the Federal Constitution's Fourteenth Amendment, a state (1) may take steps to insure that a woman's decision whether to have an abortion is thoughtful and informed, and (2) is free to enact laws to provide a reasonable framework for a

woman to make a decision that has such profound and lasting meaning as does a decision whether to terminate a pregnancy. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

RESEARCH REFERENCES

ALR. Right of action for injury to or death of woman who consented to illegal abortion. 36 A.L.R.3d 630.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment. 88 A.L.R.3d 1008.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

Provision of family planning services under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or declaration — gynecologist's prescription of drug to pregnant woman — forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Validity, under Federal Constitution, of abortion laws. 35 L. Ed. 2d 735.

Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

§ 41-41-39. Violation of provisions as misdemeanor.

Anyone who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion without complying with Sections 41-41-31 through 41-41-37 shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of One Thousand Dollars (\$1,000.00), by imprisonment in the county jail for a period of time not to exceed six (6) months or both such fine and imprisonment.

SOURCES: Laws, 1991, ch. 439, § 5, eff from and after July 1, 1991 (Governor's veto overridden by the Legislature on March 28, 1991).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion,

use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. National Org. for Women, Inc. v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340, 127 L. Ed. 2d 688 (1994), on remand, 25 F.3d 1053 (7th Cir. Ill. 1994).

RESEARCH REFERENCES

ALR. Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seek-

ing abortion with certain information. 119 A.L.R.5th 315.

§ 41-41-45. Abortion prohibited; exceptions.

[From and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, and that it is reasonably probable that this section would be upheld by the Court as constitutional, this section will read as follows:]

(1) As used in this section, the term “abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape.

(3) For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.

(4) Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

SOURCES: Laws, 2007, ch. 441, § 2, eff from and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, and that it is reasonably probable that this section would be upheld by the Court as constitutional.

Editor’s Note — Laws of 2007, ch. 441, §§ 4 through 6 provide:

“SECTION 4. At such time as the Attorney General of Mississippi determines that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that as a result, it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional, the Attorney General shall publish his determination of that fact in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972.

“SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

“(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

“(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is

subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

“(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

“SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional.”

PERFORMANCE OF ABORTIONS UPON MINORS; CONSENT

SEC.

- 41-41-51. Definitions.
- 41-41-53. Requirement of written consent; petition for waiver.
- 41-41-55. Applicability of provisions; court proceedings; standards for waiver of consent requirement.
- 41-41-57. Exception for medical emergency.
- 41-41-59. Violation of provisions as prima facie evidence of physician's unprofessional conduct.
- 41-41-61. Confidentiality of records and information; penalty for disclosure.
- 41-41-63. Severability of provisions.

§ 41-41-51. Definitions.

For purposes of Sections 41-41-51 through 41-41-63, the following definitions shall apply:

- (a) “Minor” means any person under the age of eighteen (18) years;
- (b) “Emancipated minor” means any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of her parents;
- (c) “Abortion” means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

SOURCES: Laws, 1986, ch. 448, § 1, eff from and after July 1, 1986.

Cross References — Uniform health care decisions act applicability, see § 41-41-227.

Comparable Laws from other States — Alabama Code, § 26-21-1 et seq.
 Arkansas Code Annotated, § 20-16-801 et seq.
 Georgia Code Annotated, § 15-11-110 et seq.

North Carolina General Statutes, §§ 90-216 et seq.
Tennessee Code Annotated, § 37-10-301 et seq.

JUDICIAL DECISIONS

1. In general.

The two-parent consent law for abortions for minors is not too restrictive and passes the undue burden test for determining state constitutionality. *Pro-Choice Miss. v. Fordice*, 716 So. 2d 645 (Miss. 1998).

The United States Supreme Court will hold that the record-keeping and reporting requirements of a state abortion statute, under which statute (1) every facility performing abortions is required to file a report stating the facility's name and address as well as the name and address of any related entity, (2) such information, when it comes from state-funded institutions, becomes public, (3) for each abortion, a report must be filed specifying such information as (a) the performing physician, (b) the facility, (c) the referring physician or agency, (d) the pregnant woman's age, (e) the number of prior pregnancies and abortions the woman has had, (f) gestational age, (g) the type of abortion procedure, (h) the date of the abortion, (i) whether there were any pre-existing medical conditions that would have complicated pregnancy, (j) the basis for the determination that the abortion was medically necessary, and (k) the weight of the aborted fetus; and (4) in all events, the identity of each woman who has had an abortion remains confidential, do not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where (1) four Justices of the Supreme Court express the view that such requirements relate to maternal health and do not pose a substantial obstacle to a woman's choice as to whether to terminate a pregnancy; and (2) four Justices express the view that such requirements rationally further the state's legitimate interests in medical knowledge concerning maternal health and prenatal life, in gathering statistical information concerning patients, and in assuring compliance with other provisions of the abortion statute. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d

674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

A provision of a state statute that, with certain exceptions, prohibits any person from performing an abortion on an unmarried, unemancipated minor absent notice to one of the minor's parents or a juvenile court order authorizing the minor to consent, which provision allows a physician to perform an abortion on such a minor where either (1) the physician provides at least 24 hours' actual notice of his intention to perform the abortion, in person or by telephone, to (a) one of the minor's parents or her guardian or custodian, or (b) the minor's adult brother, sister, stepparent, or grandparent, if the minor and the other relative each file an affidavit in the juvenile court stating that the minor fears physical, sexual, or severe emotional abuse from one of her parents, or (2) a physician who cannot give actual notice after a reasonable effort provides at least 48 hours' constructive notice by both ordinary and certified mail, does not render the statute unconstitutional, under the Federal Constitution, insofar as such provision requires that notice be given by the physician, rather than by some other qualified person; a state may constitutionally require a physician to take reasonable steps to notify the parent of a minor seeking an abortion, because (1) the parent often will provide important medical data to the physician, (2) a conversation with the physician may enable the parent to provide better advice to the minor, and (3) access to an experienced and, in an ideal case, detached physician who can assist the parent in approaching the problem in a mature and balanced way may benefit both the parent and the child in a manner not possible through notice by less qualified persons; furthermore, any imposition which such provision makes on the physician's schedule is unobjectionable in light of the provision's allowance for notice by mail and for the forgoing of notice in the event of certain emergencies. *Ohio v. Akron Ctr. for Reproductive*

Health, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

A state statutory provision requiring, except under certain circumstances, that an unemancipated minor's physician or an agent give written notice to both of the minor's parents, either by delivery personally to the parents or by certified mail, before an abortion is performed on the minor, no exception being made as to a divorced parent, a noncustodial parent, or a biological parent who never married or lived with the minor's mother, does not reasonably further any legitimate state interest, given that (1) to the extent that a state has a legitimate interest in supporting the authority of a parent who is presumed to act in the minor's best interest and thereby assuring that the minor's decision to terminate her pregnancy is knowing, intelligent, and deliberate, such an interest would be fully served by a requirement that the minor notify one parent, because (a) in the ideal family setting, notice to one parent would normally constitute notice to both, (b) in families in which the notified parent would not notify the other parent, the state has no legitimate interest in (i) questioning one parent's judgment that notice to the other parent would not assist the minor, or (ii) presuming that the parent who has assumed parental duties is incompetent to make decisions regarding the minor's health and welfare, and (c) with respect to dysfunctional families, a two-parent notice requirement disserves the state interest in protecting and assisting the minor, in light of evidence that in thousands of such families, such a requirement proves harmful to the minor and her family, (2) although both parents may well have an interest in the minor's abortion decision, full communication among all members of a family may not validly be decreed by the state, and (3) any state interest in protecting a parent's interest in shaping a child's values and lifestyle cannot overcome the liberty interests of a minor acting with the consent of a single parent, since the combined force of one parent's separate interest and the minor's privacy interest outweighs the

separate interest of the second parent; the fact that other state and federal consent provisions governing the health, welfare, and education of children require only one parent's consent provides testimony to the unreasonableness of the two-parent notice requirement and to the ease with which the state can adopt less burdensome means to protect the minor's welfare; thus, the two-parent notice requirement violates the Federal Constitution. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

A state may, consistent with the Federal Constitution, provide by statute that, except under certain circumstances, an unemancipated minor's physician or an agent must give written notice, either by delivery personally to the parents or by certified mail, to both of the minor's parents before an abortion is performed on the minor, but that a court of competent jurisdiction shall authorize the abortion to proceed without such notice if the court determines that (1) the minor is mature and capable of giving informed consent, or (2) an abortion without notice to both parents would be in the minor's best interest. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

In furtherance of a state's interest in the welfare of a pregnant minor, the state may, without violating the Federal Constitution, require that (1) an unemancipated minor's decision to terminate her pregnancy be made only after notification to and consultation with a parent, and (2) no abortion be performed on such a minor until at least 48 hours after such notification is given. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

State statutory provisions requiring the reporting of certain information regarding abortions are unconstitutional where (1) the scope of the information required and its availability to the public belie any assertions by the state that it is advancing any legitimate interest, and (2) the reporting requirements raise the spectre of public exposure and harassment of women who choose to exercise their personal, intensely private right, with their physician, to end a pregnancy, and the require-

ments thus impose an unacceptable danger of deterring the exercise of that right. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779

(1986), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-53. Requirement of written consent; petition for waiver.

(1) Except as otherwise provided in subsections (2) and (3) of this section, no person shall perform an abortion upon an unemancipated minor unless he or his agent first obtains the written consent of both parents or the legal guardian of the minor.

(2)(a) If the minor's parents are divorced or otherwise unmarried and living separate and apart, then the written consent of the parent with primary custody, care and control of such minor shall be sufficient.

(b) If the minor's parents are married and one (1) parent is not available to the person performing the abortion in a reasonable time and manner, then the written consent of the parent who is available shall be sufficient.

(c) If the minor's pregnancy was caused by sexual intercourse with the minor's natural father, adoptive father or stepfather, then the written consent of the minor's mother shall be sufficient.

(3) A minor who elects not to seek or does not obtain consent from her parents or legal guardian under this section may petition, on her own behalf or by next friend, the chancery court in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this section pursuant to the procedures of Section 41-41-55.

SOURCES: Laws, 1986, ch. 448, § 2, eff from and after July 1, 1986.

Cross References — Provision that a minor may proceed as though the consent requirement of this section has been waived if the chancery court fails to rule within 72 hours after an application for waiver has been filed, see § 41-41-55.

Requirement that a physician who does not comply with this section by reason of a medical emergency must state in the medical record the medical indications on which his judgment was based, see § 41-41-57.

JUDICIAL DECISIONS

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require

proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if

abortion protesters — anti-abortion groups, individuals, and coalition of anti-abortion groups — had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340, 127 L. Ed. 2d 688 (1994), on remand, 25 F.3d 1053 (7th Cir. Ill. 1994).

Provision of abortion statute requiring that minor seeking abortion must obtain informed consent of one of her parents or guardians, but containing available judicial bypass if minor does not wish to or cannot obtain such consent, did not violate due process clause. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Provisions of abortion statute requiring informed consent of woman seeking to undergo abortion and twenty-four hour waiting period after giving of consent and before abortion is performed did not violate due process clause. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Fourteenth Amendment was not violated by state statute prohibiting abortion on minor absent either parental notice, parental consent, judicial bypass, or judicial inaction. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

A state statutory provision which authorizes a minor to consent to an abortion without notifying one of her parents, if a juvenile court finds that the minor has proven in an *ex parte* proceeding, by clear and convincing evidence, that either (1) she has sufficient maturity and information to make an intelligent decision whether to have an abortion without notice, (2) one of her parents has engaged in a pattern of physical, sexual, or emotional abuse against her, or (3) notice is not in

her best interests, does not deprive a minor of her liberty interest in obtaining an abortion, under the due process clause of the Federal Constitution's Fourteenth Amendment, by imposing a heightened standard of proof upon the minor, where the minor is assisted by an attorney and a guardian ad litem; the state does not have to bear the burden of proof on the issues of the minor's maturity or best interests, insofar as the clear and convincing evidence standard insures that the judge will take special care in deciding whether the minor's consent to abortion should proceed without parental notification. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

An unmarried, unemancipated minor who seeks to obtain an abortion is not deprived of her right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to prove either that she has sufficient maturity and information to make an intelligent decision whether to have an abortion, or that parental notice would not be in her best interests, by a state statute generally prohibiting any person from performing an abortion on such a minor absent notice to one of the minor's parents, but allowing a juvenile court to authorize the minor's consent, where the minor has to choose among three pleading forms, one of which alleges her maturity only, the second of which alleges her best interests only, and the third of which alleges both her maturity and her best interests; even assuming that such pleading scheme could produce some initial confusion because few minors would have counsel when pleading, such procedure is simple and straightforward, does not deprive the minor of an opportunity to prove her case, and thus, on its face, satisfies the dictates of minimal due process, where (1) it seems unlikely that the state courts would treat a minor's choice of complaint form without due care and understanding for her unrepresented status, and (2) the minor does not make a binding election by the initial choice of pleading form and can move for leave to amend the pleadings upon receiving ap-

pointed counsel after filing the complaint. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

State's two-parent notification requirement for minor's abortion, without judicial bypass provision, did not reasonably further any legitimate state interest, therefore violated Federal Constitution, whereas with judicial bypass such requirement would be valid. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

A state may, consistent with the Federal Constitution, provide by statute that, except under certain circumstances, an unemancipated minor's physician or an agent must give written notice, either by delivery personally to the parents or by certified mail, to both of the minor's parents before an abortion is performed on the minor, but that a court of competent jurisdiction shall authorize the abortion to proceed without such notice if the court determines that (1) the minor is mature and capable of giving informed consent, or (2) an abortion without notice to both parents would be in the minor's best in-

terest. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women's constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 103 S. Ct. 2517, 76 L. Ed. 2d 733 (1983).

City ordinance requiring all second trimester abortions to be performed in hospital violates due process clause, and provisions of ordinance dealing with parental consent, informed consent, 24-hour waiting period, and disposal of fetal remains are unconstitutional. *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), on remand, 604 F. Supp. 1268 (N.D. Ohio 1984), on remand, 604 F. Supp. 1275 (N.D. Ohio 1985), overruled on other grounds, *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

RESEARCH REFERENCES

ALR. Right of minor to have abortion performed without parental consent, 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Validity, construction, and application of statutes requiring parental notification of or consent to minor's abortion. 77 A.L.R.5th 1.

Provision of family planning services

under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

§ 41-41-55. Applicability of provisions; court proceedings; standards for waiver of consent requirement.

(1) The requirements and procedures under Sections 41-41-51 through 41-41-63 shall apply and are available to minors whether or not they are residents of this state.

(2) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request or if she is not already adequately represented.

(3) Court proceedings under this section shall be confidential and anonymous and shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case shall the court fail to rule within seventy-two (72) hours of the time the application is filed. If for any reason the court fails to rule within seventy-two (72) hours of the time the application is filed, the minor may proceed as if the consent requirement of Section 41-41-53 has been waived.

(4) Consent shall be waived if the court finds by clear and convincing evidence either:

(a) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(b) That performance of the abortion would be in the best interests of the minor.

(5) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(6) An expedited confidential and anonymous appeal shall be available to any minor to whom the court denies a waiver of consent. The Mississippi Supreme Court shall issue promptly such rules and regulations as are necessary to insure that proceedings under Sections 41-41-51 through 41-41-63 are handled in an expeditious, confidential and anonymous manner.

(7) No filing fees shall be required of any minor who avails herself of the procedures provided by this section.

SOURCES: Laws, 1986, ch. 448, § 3; Laws, 2007, ch. 441, § 1, *eff from and after July 1, 2007*.

Editor's Note — Laws of 2007, ch. 441, §§ 5 and 6 provide:

“SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

“(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

“(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

“(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through

41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

“SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional.”

Amendment Notes — The 2007 amendment inserted “by clear and convincing evidence” in the introductory paragraph of (4).

Cross References — Provision that a minor may petition the chancery court for a waiver of the consent requirement, see § 41-41-53.

Requirement that a physician who does not comply with this section by reason of a medical emergency must state in the medical record the medical indications on which his judgment was based, see § 41-41-57.

Confidentiality of records and information involving court proceedings conducted pursuant to this section, see § 41-41-61.

JUDICIAL DECISIONS

1. In general.
2. Consent not waived.

1. In general.

Racketeer Influenced and Corrupt Organizations (RICO) Act does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose, therefore if abortion protesters-anti-abortion groups, individuals, and coalition of anti-abortion groups-had conspired nationwide to shut down abortion clinics through pattern of racketeering activity, including extortion, use of threatened or actual force, violence or fear, to injury of business and property interests of clinics, then clinics could maintain RICO action against protesters for violating Act. *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994), reh'g denied, 510 U.S. 1215, 114 S. Ct. 1340, 127 L. Ed. 2d 688 (1994), on remand, 25 F.3d 1053 (7th Cir. Ill. 1994).

A state abortion statute's provision concerning parental consent, which provision states that except in a medical emergency, an unemancipated woman under 18 years of age may not obtain an abortion unless (1) she and one of her parents or guardians provide informed consent, or (2) if neither a parent nor a guardian provides consent, a court authorizes the perfor-

mance of an abortion upon a determination that (a) the woman is mature and capable of giving informed consent and has done so, or (b) an abortion would be in her best interest, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where the United States Supreme Court's prior decisions have upheld such a parental consent requirement provided that there is an adequate judicial bypass procedure. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Fourteenth Amendment was not violated by state statute prohibiting abortion on minor absent either parental notice, parental consent, judicial bypass, or judicial inaction. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

In order to prevent another person from having an absolute veto power over a minor's decision to have an abortion, a state must, under the Federal Constitution, provide some sort of bypass procedure if it elects to require parental consent. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d

731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

A state statute's judicial bypass procedure for an unmarried, unemancipated minor who seeks to obtain an abortion without parental notice or parental consent satisfies the requirements of due process under the Federal Constitution's Fourteenth Amendment, where such procedure (1) permits the minor to show that she is sufficiently mature and well enough informed to decide intelligently whether to have an abortion; (2) requires a juvenile court to authorize the minor's consent where the court determines that the abortion is in the minor's best interests and in cases where the minor has shown a pattern of physical, sexual, or emotional abuse; (3) assures the minor's anonymity by providing that (a) the juvenile court shall not notify the minor's parents that she is pregnant or that she wants to have an abortion, and (b) the juvenile court and a state appellate court must maintain the confidentiality of the complaint and all other papers as nonpublic records, which records state employees are prohibited from disclosing under state criminal statutes; and (4) requires (a) the juvenile court to make its decision within 5 "business day[s]" after the minor files her complaint, (b) the appellate court to docket an appeal within 4 "days" after the minor files a notice of appeal, and (c) the appellate court to render a decision within 5

"days" after docketing the appeal. *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), on remand, 911 F.2d 731 (6th Cir. Ohio 1990), on remand, 911 F.2d 733 (6th Cir. Ohio 1990).

State's two-parent notification requirement for minor's abortion, without judicial bypass provision, did not reasonably further any legitimate state interest, therefore violated Federal Constitution, whereas with judicial bypass such requirement would be valid. *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990).

2. Consent not waived.

Chancery court's decision denying an unemancipated minor's petition for waiver of parental consent to an abortion was upheld, where the chancery court did not abuse its discretion in its findings of fact and ultimate conclusions; the chancellor was in the best position to evaluate the maturity level of the minor. *In re A.W.*, 826 So. 2d 1280 (Miss. 2002).

Minor who was unaware of the medical risks associated with abortion, did not know the name or qualifications of the doctor who would perform the abortion, and was unaware that public assistance could help with the costs of prenatal care, childbirth, and neonatal care, was properly deemed insufficiently mature to have an abortion without parental consent. *R.B. v. State*, 790 So. 2d 830 (Miss. 2001).

RESEARCH REFERENCES

ALR. Right of minor to have abortion performed without parental consent. 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

Lawyers' Edition. Supreme Court's views as to validity, under Federal Constitution, of abortion laws. 111 L. Ed. 2d 879.

§ 41-41-57. Exception for medical emergency.

Sections 41-41-51 through 41-41-63 shall not apply when, in the best clinical judgment of the physician on the facts of the case before him, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion. A physician who does not comply with Sections 41-41-53 and

41-41-55 by reason of this exception shall state in the medical record of the abortion the medical indications on which his judgment was based.

SOURCES: Laws, 1986, ch. 448, § 4, eff from and after July 1, 1986.

JUDICIAL DECISIONS

1. In general.

A state abortion statute's provision concerning parental consent, which provision states that except in a medical emergency, an unemancipated woman under 18 years of age may not obtain an abortion unless (1) she and one of her parents or guardians provide informed consent, or (2) if neither a parent nor a guardian provides consent, a court authorizes the performance of an abortion upon a determination that (a) the woman is mature and capable of giving

informed consent and has done so, or (b) an abortion would be in her best interest, does not violate the due process clause of the Federal Constitution's Fourteenth Amendment, where the United States Supreme Court's prior decisions have upheld such a parental consent requirement provided that there is an adequate judicial bypass procedure. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

RESEARCH REFERENCES

ALR. Right of minor to have abortion performed without parental consent. 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 A.L.R.3d 1097.

Requisites and conditions of judicial consent to minor's abortion. 23 A.L.R.4th 1061.

Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (complaint, petition, or declaration — gynecologist's prescription of drug to pregnant woman — forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

§ 41-41-59. Violation of provisions as prima facie evidence of physician's unprofessional conduct.

If a physician performs an abortion in violation of the provisions of Sections 41-41-51 through 41-41-63 or fails to conform to any requirement of Sections 41-41-51 through 41-41-63, then his action shall be prima facie evidence of unprofessional conduct, subjecting him to action by the State Board of Medical Licensure.

SOURCES: Laws, 1986, ch. 448, § 5, eff from and after July 1, 1986.

Cross References — State Board of Medical Licensure generally, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Medical malpractice in performance of legal abortion. 69 A.L.R.4th 875.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 65 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 11-27 (revocation or suspension of licenses).

CJS. 1 C.J.S., Abortion and Birth Control; Family Planning §§ 4-27, 29-33, 35.

70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 33-41, 44-48.

§ 41-41-61. Confidentiality of records and information; penalty for disclosure.

(1) Records and information involving court proceedings conducted pursuant to Section 41-41-55 shall be confidential and shall not be disclosed other than to the minor, her attorney and necessary court personnel. Nothing in this subsection shall prohibit the keeping of statistical records and information as long as the anonymity of the minor is in no way compromised.

(2) Any person who shall disclose any records or information made confidential pursuant to subsection (1) of this section shall be guilty of a misdemeanor and upon conviction punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1986, ch. 448, § 6, eff from and after July 1, 1986.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Eight members of Court agreed that provisions of state abortion statute requiring facilities providing abortion services to abide certain reporting and record-keeping requirements which do not include disclosure of identities of women who have undergone abortions, did not violate due process clause, at least except for

provision requiring reporting of failure to provide spousal notice. Five members of Court agreed that provision requiring reporting of failure to provide spousal notice violated due process clause. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

§ 41-41-63. Severability of provisions.

If any provision, word, phrase or clause of Sections 41-41-51 through 41-41-63 or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of Sections 41-41-51 through 41-41-63 which can be given effect without the invalid provision, word, phrase, clause or application, and to this end the provisions, words, phrases and clauses of Sections 41-41-51 through 41-41-63 are declared to be severable.

SOURCES: Laws, 1986, ch. 448, § 7, eff from and after July 1, 1986.

PARTIAL-BIRTH ABORTION BAN ACT

SEC.

41-41-71. Short title.

41-41-73. Partial-birth abortions prohibited; penalties for violations.

§ 41-41-71. Short title.

Sections 41-41-71 through 41-41-73 may be cited as the Partial-Birth Abortion Ban Act.

SOURCES: Laws, 1997, ch. 350, § 1, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 350, § 4, provides as follows:

“SECTION 4. If any provision, word, phrase or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this act that can be given effect without the invalid provision, word, phrase, clause or application and to this end, the provisions, words, phrases and clauses of this act are declared to be severable.”

Comparable Laws from other States — Alabama Code, §§ 26-23-1 et seq.

Arkansas Code Annotated, §§ 5-61-201 et seq.

Florida Annotated Statutes, §§ 782.32 through 782.34.

Georgia Code Annotated, § 16-12-144.

Louisiana Annotated Statutes, §§ 14:32-10, 14:32-11.

South Carolina Annotated, § 44-41-85.

Tennessee Code Annotated, § 39-15-209.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutory restrictions on partial birth abortions. 76 A.L.R.5th 637.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control § 60.

§ 41-41-73. Partial-birth abortions prohibited; penalties for violations.

(1) Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or imprisoned in the State Penitentiary for not more than two (2) years, or both. This subsection shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury if no other medical procedure would suffice for that purpose.

(2)(a) As used in this section, “partial-birth abortion” means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(b) As used in this section, “physician” means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State of Mississippi. However, any individual who is not a physician but who

nevertheless directly performs a partial-birth abortion shall be subject to the provisions of this section.

(3)(a) The husband of a mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of eighteen (18) years at the time of the abortion, the mother's parents may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(b) Such relief shall include:

(i) Money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(ii) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

(4) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for a conspiracy to violate this section.

SOURCES: Laws, 1997, ch. 350, § 2, eff from and after July 1, 1997.

Editor's Note — Laws, 1997, ch. 350, § 4, provides as follows:

"SECTION 4. If any provision, word, phrase or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this act that can be given effect without the invalid provision, word, phrase, clause or application and to this end, the provisions, words, phrases and clauses of this act are declared to be severable."

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutory restrictions on partial birth abortions. 76 A.L.R.5th 637.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control § 60.

ABORTION COMPLICATION REPORTING ACT

SEC.

41-41-75. Short Title.

41-41-76. Definitions.

41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.

41-41-78. Content of reports.

41-41-79. Liability.

41-41-80. Severability.

§ 41-41-75. Short Title.

Sections 41-41-75 through 41-41-80 shall be known and may be cited as the Abortion Complication Reporting Act.

SOURCES: Laws, 2004, ch. 499, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act."

§ 41-41-76. Definitions.

As used in Sections 41-41-75 through 41-41-80:

(a) "Abortion" has the meaning as defined in Section 41-41-31.

(b) "Medical treatment" means, but is not limited to, hospitalization, laboratory tests, surgery or prescription of drugs.

(c) "Department" means the State Department of Health.

SOURCES: Laws, 2004, ch. 499, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. "Sections 41-41-75 through 41-41-80" was substituted for "this act."

§ 41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.

(1) A physician shall file a written report with the State Department of Health regarding each patient who comes under the physician's professional care and requires medical treatment or suffers death that the attending physician has a reasonable basis to believe is a primary, secondary, or tertiary result of an induced abortion.

(2) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

(3) The department shall summarize aggregate data from the reports required under this section for purposes of inclusion into the annual Vital Statistics Report.

(4) The department shall develop and distribute or make available online in a downloadable format a standardized form for the report required under this section.

(5) The department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, Department of Health clinics and ambulatory surgical facilities operating in the state.

(6) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for five (5) years after the date the report is received.

(7) The report required under this section shall not contain the name of the woman, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information system file with

data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained.

(8) The department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section in a manner or fashion as to permit the person or entity to whom the report is disclosed to identify in any way the person who is the subject of the report.

(9) Disclosure of confidential identifying information in violation of this section shall constitute a felony which, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than three (3) years, or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

SOURCES: Laws, 2004, ch. 499, § 3, eff from and after July 1, 2004.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-41-78. Content of reports.

(1) Each report of medical treatment following abortion required under Section 41-41-77 shall contain the following information:

(a) The age and race of the patient;

(b) The characteristics of the patient, including residency status, county of residence, marital status, education, number of previous pregnancies, number of stillbirths, number of living children and number of previous abortions;

(c) The date the abortion was performed and the method used if known;

(d) The type of facility where the abortion was performed;

(e) The condition of the patient that led to treatment, including, but not limited to, pelvic infection, hemorrhage, damage to pelvic organs, renal failure, metabolic disorder, shock, embolism, coma or death.

(f) The amount billed to cover the treatment of the complication, including whether the treatment was billed to Medicaid, insurance, private pay or other method. This should include charges for physician, hospital, emergency room, prescription or other drugs, laboratory tests and any other costs for the treatment rendered.

(g) The charges are to be coded with IDC-9 classification numbers in such a way as to distinguish treatment following induced abortions from treatments following ectopic or molar pregnancies.

(2) Nothing in Sections 41-41-75 through 41-41-80 shall be construed as an instruction to discontinue collecting data currently being collected.

SOURCES: Laws, 2004, ch. 499, § 4, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (1) and (2). “Section 41-41-77” was substituted for “Section 4 of this act” in (1), and “Sections 41-41-75 through 41-41-80” was substituted for “this act” in (2).

§ 41-41-79. Liability.

Willful violation of the provisions of Sections 41-41-75 through 41-41-80 shall constitute a misdemeanor and shall be punishable as provided for by law, except that disclosure of confidential identifying information shall constitute a felony as provided in subsection (9) of Section 41-41-77. No physician or hospital, its officers, employees or medical and nursing personnel practicing in the hospital shall be civilly liable for violation of the provisions of Sections 41-41-75 through 41-41-80, except to the extent of liability for actual damages in a civil action for willful or reckless and wanton acts or omissions constituting that violation. However, that liability shall be subject to any immunities or limitations of liability or damages provided by law.

SOURCES: Laws, 2004, ch. 499, § 5, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. “Sections 41-41-75 through 41-41-80” was substituted for “this act” twice.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 41-41-80. Severability.

The provisions of Sections 41-41-75 through 41-41-80 are declared to be severable, and if any provision, word, phrase, or clause of Sections 41-41-75 through 41-41-80 or the application thereof to any person is held invalid, the invalidity shall not affect the validity of the remaining portions of Sections 41-41-75 through 41-41-80.

SOURCES: Laws, 2004, ch. 499, § 6, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error. “Sections 41-41-75 through 41-41-80” was substituted for “this act” throughout the section.

Editor’s Note — “The reference to ‘Section 4 of this act’ in Section 4 of Chapter 499, Laws of 2004 (codified as Section 41-41-78) is incorrect. That reference should have been to Section 3 of Chapter 499, which was codified as Section 41-41-77. Consequently, that reference in Section 41-41-78 has been changed to correctly refer to Section 41-41-77 at the direction of the Co-Counsel of The Joint Legislative Committee on Compilation, Revision and Publication of Legislation.”

PUBLIC FUNDING OF ABORTIONS

SEC.

41-41-91. Use of public funds for abortions prohibited; exceptions.

§ 41-41-91. Use of public funds for abortions prohibited; exceptions.

Notwithstanding any other provision of law to the contrary, no public funds that are made available to any institution, board, commission, department, agency, official, or employee of the State of Mississippi, or of any local political subdivision of the state, whether those funds are made available by the government of the United States, the State of Mississippi, or a local governmental subdivision, or from any other public source, shall be used in any way for, to assist in, or to provide facilities for abortion, except:

- (a) When the abortion is medically necessary to prevent the death of the mother; or
- (b) When the abortion is being sought to terminate a pregnancy resulting from an alleged act of rape or incest; or
- (c) When there is a fetal malformation that is incompatible with the baby being born alive.

SOURCES: Laws, 2002, ch. 604, § 1, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. Limitation of right.

Since it was agreed that under Miss. Code Ann. § 41-41-91 public hospitals in Mississippi were prohibited by law from performing abortions except in extremely limited circumstances, the amendment to Miss. Code Ann. § 41-75-1, requiring licensure as an ambulatory surgery facility for performance of second trimester abor-

tions effectively made abortions after the first trimester unavailable to women in Mississippi; it was a substantial obstacle to a woman's choice and would likely not survive Fourteenth Amendment scrutiny, thus, a preliminary injunction issued. *Jackson Womens Health Org. v. Amy*, 330 F. Supp. 2d 820 (S.D. Miss. 2004).

RESEARCH REFERENCES

ALR. Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 118 A.L.R.5th 463.

**WITHDRAWAL OF LIFE-SAVING MECHANISMS
[REPEALED]**

SEC.

41-41-101 through 41-41-121. Repealed.

§§ 41-41-101 through 41-41-121. Repealed.

Repealed by Laws, 1998, ch. 542, § 19, eff from and after July 1, 1998.
§ 41-41-101 through § 41-41-121. [Laws, 1984, ch. 365, §§ 1-11]

Editor's Note — Former §§ 41-41-101 through 41-41-121 related to declarations and procedures regarding the withdrawal of life-saving mechanisms. See now, § 41-41-201, et seq.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE ACT [REPEALED]

SEC.

41-41-151 through 41-41-183. Repealed.

§§ 41-41-151 through 41-41-183. Repealed.

Repealed by Laws, 1998, ch. 542, § 20, eff from and after July 1, 1998.

§ 41-41-151 through § 41-41-161. [Laws, 1990, ch. 571, § 1-6]

§ 41-41-163. [Laws, 1990, ch. 571, § 7; Laws, 1993, ch. 394, § 1]

§ 41-41-165 through § 41-41-183. [Laws, 1990, ch. 571, § 8-17]

Editor's Note — Former §§ 41-41-151 through 41-41-161 related to definitions and certain requirements for valid durable powers of attorney concerning health care decisions. See now, § 41-41-201, et seq.

Former § 41-41-163 related to the form and notice requirements for durable powers of attorney concerning health care decisions. See now, § 41-41-201, et seq.

Former §§ 41-41-165 to 41-41-183 related to powers conferred to an attorney-in-fact and the effects of valid durable powers of attorney concerning health care decisions. See now, § 41-41-201, et seq.

UNIFORM HEALTH-CARE DECISIONS ACT

SEC.

- | | |
|------------|--|
| 41-41-201. | Short title. |
| 41-41-203. | Definitions. |
| 41-41-205. | Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity. |
| 41-41-207. | Revoking designation of agent or Advance Health-Care Directive. |
| 41-41-209. | Form for Advance Health-Care Directive. |
| 41-41-211. | Surrogates. |
| 41-41-213. | Guardians and wards. |
| 41-41-215. | Health-care provider or institution responsibilities. |
| 41-41-217. | Rights to disclosure of medical and health-care information. |
| 41-41-219. | Health-care provider or institution liability and discipline. |
| 41-41-221. | Liability for intentional violations and fraudulent inducements. |
| 41-41-223. | Construction of provisions and presumed capacity. |
| 41-41-225. | Copies have same effect as originals. |
| 41-41-227. | Construction and application of provisions. |
| 41-41-229. | Equitable relief; Rules of Civil Procedure applicable. |

§ 41-41-201. Short title.

Sections 41-41-201 through 41-41-229 may be cited as the "Uniform Health-Care Decisions Act."

SOURCES: Laws, 1998, ch. 542, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

JUDICIAL DECISIONS

1. Arbitration.

Son, as the mother's health-care surrogate, had the authority to bind the mother to the arbitration agreement between the mother and nursing home under the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229; the admissions agreement between the mother and nursing home had sufficient consideration to support arbitration, the son was not fraudulently induced into signing the agreement, and the arbitration clause was substantively conscionable. *Covenant Health & Rehab. of Pica-yune, LP v. Estate of Moulds*, — So. 2d —,

2008 Miss. App. LEXIS 496 (Miss. Ct. App. Aug. 19, 2008).

Motion to compel arbitration should have been granted in a patient's personal injury case against a health care provider because the patient's daughter had the capacity to bind the patient to arbitration when the daughter signed admission forms while acting as a health-care surrogate under the Mississippi Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 to 41-41-229. *Covenant Health & Rehab. of Pica-yune, LP v. Lumpkin*, — So. 2d —, 2008 Miss. App. LEXIS 86 (Miss. Ct. App. Feb. 5, 2008).

§ 41-41-203. Definitions.

For purposes of Chapter 41 of Title 41, Mississippi Code of 1972, the following words shall have the meaning ascribed in this section unless the context shall otherwise require:

(a) “Adult” means an individual who is eighteen (18) years of age or older.

(b) “Advance health-care directive” means an individual instruction or a power of attorney for health care.

(c) “Agent” means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

(d) “Capacity” means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

(e) “Emancipated minor” means an individual under the age of eighteen (18) years who:

(i) Is or has been married;

(ii) Has been adjudicated generally emancipated by a court of competent jurisdiction; or

(iii) Has been adjudicated emancipated for the purpose of making health-care decisions by a court of competent jurisdiction.

(f) “Guardian” means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

(g) “Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(h) "Health-care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care, including:

- (i) Selection and discharge of health-care providers and institutions;
- (ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (iii) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

The phrase "health-care decision" does not include decisions made pursuant to Sections 41-39-31 through 41-39-51, the "Anatomical Gift Law."

(i) "Health-care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(j) "Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(k) "Individual instruction" means an individual's direction concerning a health-care decision for the individual.

(l) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(m) "Physician" means an individual authorized to practice medicine or osteopathy under Title 73, Chapter 25, Mississippi Code of 1972.

(n) "Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

(o) "Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(p) "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(r) "Supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(s) "Surrogate" means an individual, other than a patient's agent or guardian, authorized under Sections 41-41-201 through 41-41-229 to make a health-care decision for the patient.

SOURCES: Laws, 1998, ch. 542, § 2, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

The Anatomical Gift Law, §§ 41-39-31 through 41-39-51, referred to in this section, was repealed by Laws of 2008, ch. 561, § 26, effective July 1, 2008. For present similar provisions, see the Revised Mississippi Uniform Anatomical Gift Act, §§ 41-39-101 et seq.

JUDICIAL DECISIONS

1. Arbitration agreements.
2. Health-care decision.

1. Arbitration agreements.

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. *Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert*, 984 So. 2d 283 (Miss. Ct. App. 2006).

2. Health-care decision.

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. *Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert*, 984 So. 2d 283 (Miss. Ct. App. 2006).

§ 41-41-205. Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity.

(1) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(2) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a residential long-term health-care institution at which the principal is receiving care. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one (1) of the following methods:

(a) Be signed by at least two (2) individuals each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgement of the signature or of the instrument, each witness making the following declaration in substance: "I declare under penalty of

perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.” In addition, the declaration of at least one (1) of the witnesses must include the following: “I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.”

(b) Be acknowledged before a notary public at any place within this state, the notary public certifying to the substance of the following:

“State of _____

County of _____

On this _____ day of _____, in the year _____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

(Signature of Notary Public)”

(3) None of the following may be used as witness for a power of attorney for health care:

- (a) A health-care provider;
- (b) An employee of a health-care provider or facility; or
- (c) The agent.

(4) At least one (1) of the individuals used as a witness for a power of attorney for health care shall be someone who is neither:

- (a) A relative of the principal by blood, marriage or adoption; nor
- (b) An individual who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the power of attorney for health care or by operation of law then existing.

(5) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(6) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, must be made by the primary physician.

(7) An agent shall make a health-care decision in accordance with the

principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(8) A health-care decision made by an agent for a principal is effective without judicial approval.

(9) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(10) An advance health-care directive is valid for purposes of Sections 41-41-201 through 41-41-229 if it complies with Sections 41-41-201 through 41-41-229, regardless of when or where executed or communicated.

SOURCES: Laws, 1998, ch. 542, § 3, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-207. Revoking designation of agent or Advance Health-Care Directive.

(1) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(2) An individual may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(3) A health-care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(4) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(5) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

SOURCES: Laws, 1998, ch. 542, § 4, eff from and after July 1, 1998.

Editor's Note — Laws, 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-209. Form for Advance Health-Care Directive.

The following form may be used to create an Advance Health-Care Directive. Sections 41-41-201 through 41-41-207 and 41-41-211 through 41-41-229 govern the effect of this or any other writing used to create an advanced health-care directive. An individual may complete or modify all or any part of the following form:

ADVANCE HEALTH-CARE DIRECTIVE**Explanation**

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health-care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a residential long-term health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
- (b) Select or discharge health-care providers and institutions;
- (c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you designate a physician to have primary responsibility for your health care.

Part 4 of this form lets you authorize the donation of your organs at your death, and declares that this decision will supersede any decision by a member of your family.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

| | | | |
|--|--------|--------------|------------|
| (name of individual you choose as agent) | | | |
| (address) | (city) | (state) | (zip code) |
| (home phone) | | (work phone) | |

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

| | | | |
|--|--------|--------------|------------|
| (name of individual you choose as first alternate agent) | | | |
| (address) | (city) | (state) | (zip code) |
| (home phone) | | (work phone) | |

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

| | | | |
|---|--------|--------------|------------|
| (name of individual you choose as second alternate agent) | | | |
| (address) | (city) | (state) | (zip code) |
| (home phone) | | (work phone) | |

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box ☐, my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, or

[] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3

PRIMARY PHYSICIAN

(OPTIONAL)

(10) I designate the following physician as my primary physician:

(name of physician)

(address)

(city)

(state)

(zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address)

(city)

(state)

(zip code)

(phone)

(11) EFFECT OF COPY: A copy of this form has the same effect as the original.

(12) SIGNATURES: Sign and date the form here:

| | |
|-----------|-------------------|
| _____ | _____ |
| (date) | (sign your name) |
| _____ | _____ |
| (address) | (print your name) |
| _____ | _____ |
| (city) | (state) |

PART 4

CERTIFICATE OF AUTHORIZATION FOR ORGAN DONATION

(OPTIONAL)

I, the undersigned, this _____ day of _____, 20_____, desire that my _____ organ(s) be made available after my demise for:

(a) Any licensed hospital, surgeon or physician, for medical education, research, advancement of medical science, therapy or transplantation to individuals;

(b) Any accredited medical school, college or university engaged in medical education or research, for therapy, educational research or medical science purposes or any accredited school of mortuary science;

(c) Any person operating a bank or storage facility for blood, arteries, eyes, pituitaries, or other human parts, for use in medical education, research, therapy or transplantation to individuals;

(d) The donee specified below, for therapy or transplantation needed by him or her, do donate my _____ for that purpose to _____ (name) at _____ (address).

I authorize a licensed physician or surgeon to remove and preserve for use my _____ for that purpose.

I specifically provide that this declaration shall supersede and take precedence over any decision by my family to the contrary.

Witnessed this _____ day of _____, 20_____.

| |
|-------------|
| _____ |
| (donor) |
| _____ |
| (address) |
| _____ |
| (telephone) |
| _____ |
| (witness) |
| _____ |
| (witness) |

(13) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two (2) qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I declare under penalty of perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility. I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

| | |
|----------------|---------------------------|
| _____ | _____ |
| (date) | (signature of witness) |
| _____ | _____ |
| (address) | (printed name of witness) |
| _____ | |
| (city) (state) | |

Witness

I declare under penalty of perjury pursuant to Section 97-9-61, Mississippi Code of 1972, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.

| | |
|----------------|---------------------------|
| _____ | _____ |
| (date) | (signature of witness) |
| _____ | _____ |
| (address) | (printed name of witness) |
| _____ | |
| (city) (state) | |

ALTERNATIVE NO. 2

State of _____

County of _____

On this _____ day of _____, in the year _____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or

proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

(Signature of Notary Public)

SOURCES: Laws, 1998, ch. 542, § 5; Laws, 2005, ch. 472, § 5, eff from and after July 1, 2005.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

Laws of 2005, ch. 472, § 1 provides as follows:

“SECTION 1. This act shall be known and may be cited as the “Lindsay Miller — Beth Finch Organ Recovery Act.”

At the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, to correct a typographical error in Part 4(b), the word “of” was substituted for “or” so that “school or mortuary science” now reads “school of mortuary science.”

§ 41-41-211. Surrogates.

(1) A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

(2) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health-care provider. In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- (a) The spouse, unless legally separated;
- (b) An adult child;
- (c) A parent; or
- (d) An adult brother or sister.

(3) If none of the individuals eligible to act as surrogate under subsection (2) is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

(4) A surrogate shall communicate his or her assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (2) who can be readily contacted.

(5) If more than one (1) member of a class assumes authority to act as surrogate, and they do not agree on a health-care decision and the supervising

health-care provider is so informed, the supervising health-care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

(6) A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(7) A health-care decision made by a surrogate for a patient is effective without judicial approval.

(8) An individual at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

(9) A surrogate may not be an owner, operator, or employee of a residential long-term health-care institution at which the patient is receiving care unless related to the patient by blood, marriage, or adoption, except in the case of a patient of a state-operated facility who has no person listed in subsection (2) reasonably available to act as a surrogate.

(10) A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

SOURCES: Laws, 1998, ch. 542, § 6; Laws, 1999, ch. 425, § 1, eff from and after passage (approved Mar. 18, 1999.)

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

JUDICIAL DECISIONS

1. Arbitration agreements.
2. Incapacity by admission.
3. Authority to bind.

1. Arbitration agreements.

Decedent nursing home resident's nephew was not shown to meet the requirements of a healthcare surrogate—and thus an admissions agreement that was signed by the nephew did not bind the decedent to an arbitration clause—be-

cause: (1) there was no evidence that the decedent had been determined by her primary physician to lack capacity; (2) although there was evidence that the decedent had a living adult child who, under the statute, would have had priority to serve as her surrogate, the record contained no evidence that her adult child was unavailable or unwilling to act as a surrogate; and (3) the nephew did not fall

under any of the statute's enumerated categories of those who could act as a surrogate, nor was there evidence that the nephew exhibited special care and concern for the decedent, or that he was familiar with her personal values. *Compere's Nursing Home, Inc. v. Estate of Farish*, 982 So. 2d 382 (Miss. 2008).

Trial court erred in denying the nursing home's motion to compel arbitration as the caretaker had authority to bind the resident to the arbitration provision within the nursing home admission agreement, because she was a health-care surrogate under Miss. Code Ann. § 41-41-211(3); the caretaker's reason to place the resident in the home was a health-care decision. *Magnolia Healthcare, Inc. v. Barnes*, — So. 2d —, 2008 Miss. LEXIS 26 (Miss. Jan. 10, 2008).

With respect to deceased's admission into a nursing home under an agreement with the deceased's daughter, the daughter had no authority as a health care surrogate to enter into the agreement's arbitration provision because signing the provision was not necessary for deceased's admission and was not necessarily in his best interest. *Miss. Care Ctr. of Greenville, LLC v. Hinyub*, 975 So. 2d 211 (Miss. 2008).

Son would have been authorized to bind his mother and her estate to arbitration with the nursing home were she first properly determined to be incapacitated; however, the proof as to the mother's incapacity was insufficient to statutorily authorize the son to make a health care decision for her as a surrogate pursuant to Miss. Code Ann. § 41-41-211. *Trinity Mission of Clinton, LLC v. Barber*, 988 So. 2d 910 (Miss. Ct. App. 2007).

Parties stipulated that the father, a nursing home resident, was competent when he entered the nursing home, and no physician had declared him incompetent, and no agent or guardian had been appointed; accordingly, the father's half-sister could not have been his healthcare surrogate and because the father was not incapacitated, the statutes governing health care surrogates did not apply.

Gren. Living Ctr., LLC v. Coleman, 961 So. 2d 33 (Miss. 2007).

Arbitration clause in a nursing home admission agreement signed by a patient's mother was enforceable where the patient admitted she was mentally incapacitated and could not sign the agreement, and the mother was an appropriate member of the class from which a surrogate could be drawn under Miss. Code Ann. § 41-41-211(2)(c). *JP Morgan Chase & Co. v. Conegie*, 492 F.3d 596 (5th Cir. 2007).

Son, as the resident's health care surrogate, had the authority to make health care decisions pursuant to Miss. Code Ann. § 41-41-211(2); however, health care decisions did not include signing arbitration agreements, as the decision to arbitrate was neither explicitly authorized nor implied within Miss. Code Ann. § 41-41-203(h), and the jury had to determine whether the resident signed the admission agreement and if so, whether she was competent to do so. *Covenant Health & Rehab. of Picayune, LP v. Estate of Lambert*, 984 So. 2d 283 (Miss. Ct. App. 2006).

2. Incapacity by admission.

Seeing that the decedent was incapacitated by virtue of admission by her representatives and corroboration by her admitting physician, she was capable legally of having her decisions made by a surrogate; her adult daughter was an appropriate member of the classes from which a surrogate could be drawn, and thus the daughter could contractually bind the decedent in matters of health care. *Covenant Health Rehab of Picayune, L.P. v. Brown*, 949 So. 2d 732 (Miss. 2007).

3. Authority to bind.

Nursing home resident's granddaughter had no authority to bind the resident to a nursing home agreement the granddaughter signed because the granddaughter was not a health-care surrogate, and the resident had not been determined to be incompetent. *Forest Hill Nursing Ctr., Inc. v. McFarlan*, 995 So. 2d 775 (Miss. Ct. App. 2008).

§ 41-41-213. Guardians and wards.

(1) A guardian shall comply with the ward's individual instructions and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes.

(2) Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

(3) A health-care decision made by a guardian for the ward is effective without judicial approval.

SOURCES: Laws, 1998, ch. 542, § 7, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-215. Health-care provider or institution responsibilities.

(1) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(2) A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

(3) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(4) Except as provided in subsections (5) and (6), a health-care provider or institution providing care to a patient shall:

(a) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(b) Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(5) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care

decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(6) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(7) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(a) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(b) Provide continuing care to the patient until a transfer can be effected; and

(c) Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

(8) A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

(9) If the patient who is an adult or emancipated minor has been determined by the primary physician to lack capacity to make a health-care decision and an agent, guardian or surrogate is not reasonably available, consent may be given by an owner, operator or employee of a residential long-term health-care institution at which the patient is a resident if there is no advance health-care directive to the contrary and a licensed physician who is not an owner, operator or employee of the residential long-term health-care institution at which the patient is a resident has determined that the patient is in need of health care. This power to consent is limited to the terms of this subsection (9) and shall not be construed to repeal or otherwise affect the prohibition of Section 41-41-211(9) relating to owners, operators, or employees of long-term health-care institutions. The consent given pursuant to this subsection shall be limited to the health-care services determined necessary by the licensed physician and shall in no event include the power to consent to or direct withholding or discontinuing any life support, nutrition, hydration or other treatment, care or support. When consent is obtained under this subsection, compliance with these requirements shall be stated in the patient's health-care record.

SOURCES: Laws, 1998, ch. 542, § 8; Laws, 1999, ch. 513, § 1, eff from and after passage (approved Apr. 15, 1999.)

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applica-

tions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

§ 41-41-217. Rights to disclosure of medical and health-care information.

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

SOURCES: Laws, 1998, ch. 542, § 9, eff from and after July 1, 1998.

Editor’s Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

§ 41-41-219. Health-care provider or institution liability and discipline.

(1) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(b) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority; or

(c) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(2) An individual acting as agent or surrogate under Sections 41-41-201 through 41-41-229 is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

SOURCES: Laws, 1998, ch. 542, § 10, eff from and after July 1, 1998.

Editor’s Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

§ 41-41-221. Liability for intentional violations and fraudulent inducements.

(1) A health-care provider or institution that intentionally violates Sections 41-41-201 through 41-41-229 is subject to liability to the aggrieved

individual for damages of Five Hundred Dollars (\$500.00) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(2) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health-care directive, is subject to liability to that individual for damages of Twenty-five Hundred Dollars (\$2,500.00) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

SOURCES: Laws, 1998, ch. 542, § 11, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-223. Construction of provisions and presumed capacity.

(1) Sections 41-41-201 through 41-41-229 do not affect the right of an individual to make health-care decisions while having capacity to do so.

(2) An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive, and to designate or disqualify a surrogate.

SOURCES: Laws, 1998, ch. 542, § 12, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-225. Copies have same effect as originals.

A copy of a written advance health-care directive, revocation of an advance health-care directive, or designation or disqualification of a surrogate has the same effect as the original.

SOURCES: Laws, 1998, ch. 542, § 13, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-227. Construction and application of provisions.

(1) Sections 41-41-201 through 41-41-229 do not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(2) Death resulting from the withholding or withdrawal of health care in accordance with Sections 41-41-201 through 41-41-229 does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(3) Sections 41-41-201 through 41-41-229 do not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

(4) Sections 41-41-201 through 41-41-229 do not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(5) Sections 41-41-201 through 41-41-229 do not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care institution unless the individual's written advance health-care directive expressly so provides.

(6) Sections 41-41-201 through 41-41-229 do not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

(7) Sections 41-41-201 through 41-41-229 do not apply to Sections 41-41-31 through 41-41-39, which govern the performance of abortions, or Sections 41-41-51 through 41-41-63, which govern the performance of abortions upon minors.

SOURCES: Laws, 1998, ch. 542, § 14, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 542, § 16, provides:

"SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

§ 41-41-229. Equitable relief; Rules of Civil Procedure applicable.

On petition of a patient, the patient's agent, guardian, or surrogate, a health-care provider or institution involved with the patient's care, or an individual described in Section 41-41-211(2) or (3), any court of competent jurisdiction may enjoin or direct a health-care decision or order other equitable relief. A proceeding under this section shall be governed by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1998, ch. 542, § 15, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a reference in the first sentence. The reference to “Section 9(2) or (3)” was changed to “Section 41-41-211(2) or (3).” The Joint Committee ratified the correction at its April 28, 1999, meeting.

Editor’s Note — Laws of 1998, ch. 542, § 16, provides:

“SECTION 16. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

CHAPTER 42

Family Planning

SEC.

- | | |
|----------|--|
| 41-42-1. | Title. |
| 41-42-3. | Definitions. |
| 41-42-5. | Power and authority of State Board of Health. |
| 41-42-7. | Furnishing contraceptive supplies and information to minors. |

§ 41-42-1. Title.

This chapter shall be known and may be cited as the Family Planning Law of 1972.

SOURCES: Codes, 1942, § 7129-151; Laws, 1972, ch. 531, § 1, eff from and after July 1, 1972.

RESEARCH REFERENCES

| | |
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| ALR. Propriety of prophylactic availability programs. 52 A.L.R.5th 477. | Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq. |
|--|---|

§ 41-42-3. Definitions.

For the purposes of this chapter and as used herein:

- (a) "Board" means the Mississippi State Board of Health;
- (b) "Physician" means any doctor of medicine duly licensed to practice his profession in Mississippi or the state in which he resides and lawfully practicing his profession;
- (c) "Contraceptive procedures" means any medically accepted procedure designed to prevent conception;
- (d) "Contraceptive supplies" means those medically approved items designed to prevent conception through chemical, mechanical, or other means.

SOURCES: Codes, 1942, § 7129-152; Laws, 1972, ch. 531, § 2, eff from and after July 1, 1972.

§ 41-42-5. Power and authority of State Board of Health.

The State Board of Health is authorized to receive and disburse such funds as may become available to it for family planning programs to any organization, public or private, engaged in providing contraceptive procedures, supplies, and information. Any family planning program administered by the board may be developed in consultation and coordination with other family planning agencies in this state.

The board is hereby authorized to adopt and promulgate rules and regulations to implement the provisions of this chapter.

The board may provide for the dissemination of medically acceptable contraceptive information and supplies by duly authorized persons in state and county health and welfare departments and in medical facilities at institutions of higher learning.

SOURCES: Codes, 1942, § 7129-153; Laws, 1972, ch. 531, § 3, eff from and after July 1, 1972.

Cross References — Power of the state board of health to establish programs concerning family planning, see § 41-3-15.

RESEARCH REFERENCES

ALR. Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 A.L.R.5th 1.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

§ 41-42-7. Furnishing contraceptive supplies and information to minors.

Contraceptive supplies and information may be furnished by physicians to any minor who is a parent, or who is married, or who has the consent of his or her parent or legal guardian, or who has been referred for such service by another physician, a clergyman, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision thereof.

SOURCES: Codes, 1942, § 7129-154; Laws, 1972, ch. 531, § 4, eff from and after July 1, 1972.

JUDICIAL DECISIONS

1. In general.

The Federal Constitution does not forbid a state from expressing a preference for normal childbirth rather than for abortion. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

Under the due process clause of the Federal Constitution's Fourteenth Amendment, a state (1) may take steps to insure that a woman's decision whether to have an abortion is thoughtful and informed, and (2) is free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning as does a decision whether to terminate a preg-

nancy. *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), on remand, 978 F.2d 74 (3d Cir. Pa. 1992).

The Federal Government has no duty, under the due process clause of the Federal Constitution's Fifth Amendment, to subsidize an activity merely because the activity is constitutionally protected, and thus it may validly choose to fund childbirth over abortion and implement that judgment in health regulations by the allocation of public funds for medical services relating to childbirth but not to those relating to abortion; the government has no affirmative duty under the due process clause to commit any resources to facilitating abortions, and its decision to fund

childbirth but not abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative

activity deemed in the public interest. *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), overruled on other grounds, *Planned Parenthood v. Miller*, 63 F.3d 1452 (8th Cir. S.D. 1995).

RESEARCH REFERENCES

ALR. Validity of regulations as to contraceptives or the dissemination of birth control information. 96 A.L.R.2d 955.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures. 27 A.L.R.3d 906.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 70 A.L.R.3d 315.

Validity of sex education programs in public schools. 82 A.L.R.3d 579.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment. 88 A.L.R.3d 1008.

When statute of limitations begins to run against malpractice action in connection with sterilization or birth control procedures. 93 A.L.R.3d 218.

Medical malpractice: administering or prescribing birth control pills or devices. 9 A.L.R.4th 372.

Misrepresentation regarding sterility or use of birth control. 31 A.L.R.4th 389.

Recoverability of compensatory damages for mental anguish or emotional dis-

tress for tortiously causing another's birth. 74 A.L.R.4th 798.

Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy. 2 A.L.R.5th 301.

Parent's child support liability as affected by other party's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to abort pregnancy. 2 A.L.R.5th 337.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Provision of family planning services under Title X of Public Health Service Act (42 USCS secs. 300-300a-8) and implementing regulations. 71 A.L.R. Fed. 961.

Am Jur. 1 Am. Jur. 2d, Abortion and Birth Control §§ 1 et seq.

Lawyers' Edition. Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L. Ed. 2d 892.

CHAPTER 43

Cemeteries and Burial Grounds

| | |
|--------------------|----------|
| In General | 41-43-1 |
| Cemetery Law | 41-43-31 |

IN GENERAL

SEC.

- 41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.
- 41-43-3. Appointment of trustee for private or family cemetery or burying ground.
- 41-43-5. Use of vacant portions of lots by not-for-profit cemetery permitted under certain circumstances; notice to potential living heirs of original purchaser; recordkeeping.
- 41-43-7. Penalty for violation of chapter.

§ 41-43-1. Regulation of cemeteries in the vicinity of hospitals; private family cemeteries.

(1) No person, firm, association, or corporation shall locate a new public or private cemetery for burial of human beings within five hundred (500) yards of a public or private hospital or other medical facility wherein sick or injured persons are usually kept overnight for medical treatment and rehabilitation, without such person, firm, association, or corporation having first obtained a written order of approval from the board of supervisors if the proposed cemetery or burial ground is located outside the corporate limits of a municipality, or without such person, firm, association, or corporation having first obtained a written order of approval from the governing authorities of the municipality if the proposed cemetery or burial ground is located inside the corporate limits of a municipality.

Any realty used for burial purposes in violation of this subsection shall be deemed a common nuisance, and may be abated by the chancery court upon a petition filed therefor by the district attorney or county attorney, city attorney, attorney for the board of supervisors, or any person or persons aggrieved by the violation of this subsection.

This subsection shall not apply to any established cemeteries or burial grounds which now have human remains interred thereon.

(2) The board of supervisors of any county is authorized and empowered, upon petition and request to do so, to establish or designate the location of any private family cemetery to be located in the county.

SOURCES: Codes, 1942, § 2890.6; Laws, 1966, ch. 398, § 1; Laws, 1982, ch. 307, eff from and after July 1, 1982.

Cross References — Effect of law regulating funeral service practice on regulation of cemeteries, cemetery chapels, or cemetery crematories, see § 73-11-63.

Nuisances, generally, see §§ 95-3-1 et seq.

ATTORNEY GENERAL OPINIONS

Section 41-43-1(2) does not give the board of supervisors the authority to establish or designate the location of any private family cemetery within municipal corporate limits in the county. Mullins, June 7, 1995, A.G. Op. #95-0340.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. 2d, Cemeteries §§ 9, 13 et seq. **Law Reviews.** 1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 41-43-3. Appointment of trustee for private or family cemetery or burying ground.

When any donation or bequest is made by any person, company or corporation, of money or property to be used for the maintenance and preservation of any private or family cemetery or burying ground, and no trustee be appointed by such person, company or corporation, or if appointed, the trustee should die, resign, or otherwise become incompetent, the chancellor, on petition of any person having, or feeling, any interest therein, may, in vacation or in term-time, appoint a trustee to administer the trust on such terms as he may deem proper. If a trustee shall improperly administer the trust, he may be removed by the chancellor and another appointed.

SOURCES: Codes, 1906, § 555; Hemingway's 1917, § 315; 1930, § 362; 1942, § 1273.

Cross References — Regulation of cemeteries, generally, see §§ 41-43-31 et seq. Perpetual care cemeteries, see §§ 41-43-37 through 41-43-39. Cemetery ownership by religious societies, see § 79-11-33. Effect of burial association law, see § 83-37-33.

JUDICIAL DECISIONS

1. In general.

A lot in a country churchyard where three graves of a family are situated, is a

private burying ground. *Nolan v. Easley*, 214 Miss. 190, 58 So. 2d 491 (1952).

ATTORNEY GENERAL OPINIONS

A private family cemetery does not have to be set up as a trust. Section 41-43-3 deals only with the situation where a donation or bequest is made to be used for the maintenance and preservation of a private or family cemetery. Shannon, February 23, 1996, A.G. Op. #96-0077.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. 2d, Cemeteries §§ 2, 4, 5. **CJS.** 14 C.J.S., Cemeteries §§ 1, 2.

§ 41-43-5. Use of vacant portions of lots by not-for-profit cemetery permitted under certain circumstances; notice to potential living heirs of original purchaser; recordkeeping.

(1) The provisions of this section apply to any not-for-profit cemetery:

(a) In which a lot was sold or reserved to be used for burial plots;

(b) Only a portion of the lot has been used for burial plots;

(c) There is sufficient space for additional burial plots to be located within the same lot;

(d) The owner of the cemetery desires to use the vacant portions of the lot for additional burial plots; and

(e) There are no known heirs of the person who originally purchased or reserved the lot from whom the cemetery may obtain permission to use the vacant portions of the lot for additional burial plots.

(2) The owner of the cemetery first shall make reasonably diligent efforts to identify any living heirs of the person who originally purchased or reserved the lot. If there are any potential living heirs known to the owner of the cemetery, the owner shall mail a notice to those persons at their last known address, informing them that if they do not notify the cemetery within ninety (90) days after the date of the notice, they will be barred from objecting to the cemetery's use of the vacant portions of the lot for additional burial plots after that time.

(3) In addition, the owner of the cemetery shall publish, for three (3) consecutive weeks in some newspaper published or having circulation in the county in which the cemetery is located, a notice that any persons having any claim of ownership to the lot in the cemetery must notify the cemetery within ninety (90) days after the first publication of the notice or they will be barred from objecting to the cemetery's use of vacant portions of the lot for additional burial plots after that time.

(4) If any person notifies the cemetery within the time specified in subsection (2) or (3) of this section, and the cemetery determines that the person has an ownership interest in the lot, then the cemetery may not use the vacant portions of the lot for additional burial plots without the permission of that person. If no person notifies the cemetery within the time specified in subsection (2) or (3) of this section, or if the cemetery determines that a person or persons who timely notified the cemetery does not have an ownership interest in the lot, then the cemetery may use the vacant portions of the lot for additional burial plots, and no claim shall be allowed that the cemetery has used the lot without the permission of an owner of the lot.

(5) The owner of the cemetery shall maintain permanent records documenting the mailed notice and the published notice provided by the cemetery under subsections (2) and (3) of this section.

SOURCES: Laws, 2009, ch. 388, § 1, eff from and after July 1, 2009.

§ 41-43-7. Penalty for violation of chapter.

The Secretary of State may impose, following notice and an opportunity for a hearing, monetary penalties not to exceed One Thousand Dollars (\$1,000.00) per occurrence for any violation of this chapter or any rule, regulation or order issued by the Secretary of State.

SOURCES: Laws, 2009, ch. 549, § 24, eff from and after July 1, 2009.

CEMETERY LAW

Sec.

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|-----------|--|
| 41-43-31. | Title. |
| 41-43-33. | Who is subject to cemetery law. |
| 41-43-35. | Designation of cemetery organizations as perpetual care cemeteries. |
| 41-43-37. | Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries. |
| 41-43-38. | Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits. |
| 41-43-39. | Operation as perpetual care cemetery; procedure by existing organizations. |
| 41-43-40. | Perpetual care cemetery to maintain up-to-date record of persons buried in cemetery or entombed in mausoleum or columbarium; contents. |
| 41-43-41. | Nonperpetual care cemetery may become perpetual care cemetery; all cemeteries created after July 1, 2009, to be perpetual care cemeteries unless exempt. |
| 41-43-43. | Nonperpetual care cemeteries to call attention to such fact in all sales contracts and deeds. |
| 41-43-45. | Lots sold to public to be free from liens; sale or transfer of lots by purchaser. |
| 41-43-47. | Cemetery rules and regulations. |
| 41-43-49. | Repealed. |
| 41-43-51. | Rule against perpetuities inapplicable to perpetual care funds. |
| 41-43-53. | Penalty for violations of Section 41-43-31 et seq. |
| 41-43-55. | Business records of all perpetual care cemeteries to be available for inspection and examination by Secretary of State; inspection of cemetery sites. |
| 41-43-57. | Application for release of trust principal for certain purposes under exceptional circumstances. |

§ 41-43-31. Title.

Sections 41-43-31 through 41-43-53 may be cited as the “Cemetery Law.”

SOURCES: Codes, 1942, § 5308-01; Laws, 1958, ch. 481, § 1, eff from and after passage (approved May 6, 1958).

Cross References — Effect of law regulating funeral service practice on regulation of cemeteries, cemetery chapels, or cemetery crematories, see § 73-11-63.

RESEARCH REFERENCES

ALR. Construction and application of graverobbing statutes. 52 A.L.R.3d 701. **Am Jur.** 14 Am. Jur. 2d, Cemeteries §§ 1 et seq.

§ 41-43-33. Who is subject to cemetery law.

Any person, partnership, corporation or other organization organized or engaging in business under the laws of the State of Mississippi, whether for profit or not-for-profit, or wheresoever organized and doing business in the State of Mississippi, of owning, maintaining or operating a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations and cemeteries that are affiliated with or owned by churches or religious societies, established fraternal societies, municipalities, other political subdivisions of the State of Mississippi, or family cemeteries or family burial grounds, and community cemeteries that provide burial lots at no charge, or sell burial lots to the public, shall be subject to the provisions of Section 41-43-31 et seq.

From and after July 1, 2009, all new cemeteries must be perpetual care cemeteries unless exempt under the provisions of this section.

SOURCES: Codes, 1942, § 5308-02; Laws, 1958, ch. 481, § 2; Laws, 2009, ch. 549, § 17, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the section.

ATTORNEY GENERAL OPINIONS

Since Section 41-43-33 only deals with people, partnerships or corporations engaged in the cemetery business, a private family cemetery which would not be selling would not be subject to the cemetery law. Shannon, February 23, 1996, A.G. Op. #96-0077.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. 2d, Cemeteries §§ 3 et seq. **CJS.** 14 C.J.S., Cemeteries §§ 2 et seq.

§ 41-43-35. Designation of cemetery organizations as perpetual care cemeteries.

All such organizations subject to the provisions of Section 41-43-31 et seq. shall be, for the purposes hereof, designated as “perpetual care cemeteries.”

SOURCES: Codes, 1942, § 5308-03; Laws, 1958, ch. 481, § 3; Laws, 2009, ch. 549, § 18, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Trust business charter exemption, see § 81-27-1.102

§ 41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.

(1) The owner of every cemetery, subject to the provisions of Section 41-43-31 et seq., that is organized, begins or continues to do business in the State of Mississippi after July 1, 2009, shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the cemetery. The perpetual care trust fund shall not be subject to the claims of the cemetery's creditors and shall not be used as collateral, pledged, encumbered or placed at risk. This fund shall be created and established as follows:

(a) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or Forty Cents (40¢) per square foot of ground interment rights sold, whichever is greater;

(b) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Fifty Dollars (\$50.00) per crypt sold, whichever is greater; and

(c) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche sold, whichever is greater.

For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

(2) From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash, check, money order or electronic transfer and shall be deposited with the custodian or trustee of the fund not later than the fifth day of the following month from when funds are received.

(3) In addition to the provisions of subsections (1) and (2) of this section, any cemetery organized after July 1, 2009, or any mausoleum or columbarium that is built at any location other than upon property owned by an existing cemetery after that date, whether it is by incorporation, association, individually or by any other means, or having its first burial after that date, shall, before disposing of any burial lot or right or making any sale thereof and/or making its first burial, cause to be deposited the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash into an irrevocable perpetual care trust fund as provided in subsection (1) of this section for the maintenance of the cemetery.

(4) Whenever the cemetery has deposited in the perpetual care fund, as required by this section, a sum amounting to Fifty Thousand Dollars (\$50,000.00), it shall submit proof of that fact to its trustee, and it shall be the duty of the trustee to thereupon pay over to the cemetery the amount of

Twenty-five Thousand Dollars (\$25,000.00) so originally deposited by it in the perpetual care fund.

(5) The perpetual care fund shall be permanently set aside in trust to be administered under the jurisdiction of the Secretary of State. The Secretary of State shall have full jurisdiction over the reports and accounting of trustees and the amount of a surety bond required, if any. The trust officer or trustee responsible for the investment of funds shall be affiliated with an established bank, trust company, other financial institution or financial services company. Only the income from the fund shall be used for the care and maintenance of the cemetery for which it was established.

(6) Each geographic location of a cemetery shall constitute a separate and distinct cemetery for the purpose of interpretation and application of this section.

(7) The Secretary of State shall develop and implement a registration system for perpetual care cemeteries subject to this chapter. The Secretary of State is authorized to promulgate rules and regulations for the development and implementation of a statewide registry and to collect a registration fee not to exceed Twenty-five Dollars (\$25.00) per year to be paid at the same time as the reports and accountings required by Section 41-43-38 are due.

(8) To assist with the development of a statewide registry of perpetual care cemeteries, the county boards of supervisors in conjunction with the chancery clerks shall provide the Secretary of State with a list of all perpetual care cemeteries and other pertinent information regarding perpetual care cemeteries situated in their respective counties no later than October 31, 2009.

SOURCES: Codes, 1942, § 5308-04; Laws, 1958, ch. 481, § 4; Laws, 1966, ch. 375, § 1; Laws, 1982, ch. 371, § 1; Laws, 2009, ch. 549, § 19, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Appointment of trustee for private or family cemetery or burying ground, see § 41-43-3.

Accounting and reporting requirements for perpetual care cemeteries, see § 41-43-38.

Qualifications for cemetery in existence prior to May 6, 1958 to be perpetual care cemetery, see § 41-43-39.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am Jur. 14 Am. Jur. 2d, Cemeteries § 7.

4A Am. Jur. Legal Forms 2d, Cemetery-

ies §§ 54:221-54:224 (agreement for perpetual care).

4A Am. Jur. Legal Forms 2d, Cemeteries §§ 54:231, 54:232 (testamentary provisions for perpetual care).

CJS. 14 C.J.S., Cemeteries § 9.

§ 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits.

(1) The provisions of this section shall apply to every cemetery that is required to establish and maintain a perpetual care trust fund as provided in Section 41-43-37.

(2) By March 31 of each year, each perpetual care cemetery not exempt by Section 41-43-33 shall file with the Secretary of State the following information:

(a) The name of the cemetery, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned;

(b) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or columbarium niches for which payment has been made in full or deeds of conveyance or perpetual easements issued thereon during the preceding calendar year;

(c) The amounts paid into the perpetual care fund, and the income earned therefrom during the preceding calendar year;

(d) The number of acres embraced within each cemetery and held by the cemetery for cemetery purposes; and

(e) The names and addresses of the owners of the cemetery or the officers and directors of the corporation and any change of control that occurred during the preceding calendar year.

(3) The custodian or trustee of the perpetual care fund of each cemetery shall annually prepare and file with the Secretary of State a detailed accounting and report of the fund on or before March 31 of each year for the preceding calendar year. The accounting and report shall contain a properly itemized description of the securities in which the monies of the perpetual care fund are invested, the fund value, and any changes in the investment portfolio from the prior year's report. The accounting and report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

For each day that the report and accounting required by subsections (2) and (3) of this section are late, the Secretary of State is authorized to charge a late fee of Ten Dollars (\$10.00) per day.

(4) As a condition to the transfer of any perpetual care trust fund monies from one (1) trustee or trust institution to another, the cemetery for which the fund is maintained shall, not less than thirty (30) days before the time when the transfer is to occur, file with the Secretary of State a written notice of intent to transfer accompanied with a letter of intent to receive the trust fund monies from the trustee or trust institution to which the trust fund monies are to be transferred. The fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee only after approval has been issued in writing by the Secretary of State or his representative.

(5) Before any sale or transfer of a perpetual care cemetery or a controlling interest therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer or transferor and transferee and filed with the Secretary of State. The audit shall be current within thirty (30) days of the proposed sale or transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Secretary of State or his representative.

(6) The Secretary of State shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by certified letter or hand delivery to the last known cemetery owner or owners, or, if incorporated, its officers and directors, at its or their last known address, that those records, reports or notices have not been received. Failure of those persons to file the records, reports or notices within fifteen (15) days after receipt of the certified letter or hand delivery shall, in the absence of clear justification or excuse, constitute a misdemeanor and each owner of the cemetery and, if incorporated, its officers and directors, shall be subject to the penalties provided for in Section 41-43-53.

(7) Whenever it reasonably appears to the Secretary of State, any owner or purchaser, or the family, legal representative or next of kin of any such owner or purchaser, of any lot, plot, grave, crypt, niche or burial space within a perpetual care cemetery, that (a) the cemetery is insolvent or about to become insolvent; or (b) no perpetual care trust fund has been established for the cemetery or, if established, the trust fund does not contain the funds as are required to be contained therein, that party may bring an action in the chancery court in the county in which the cemetery is located. Upon a proper showing, the court shall order a private audit and examination of any perpetual care trust fund of the cemetery and of all the books, records and papers employed in the transaction of the cemetery business.

If the audit and examination show that the cemetery is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for the cemetery, the court shall exercise any jurisdiction and make and issue any orders and decrees as may be necessary to correct and enforce compliance with the provisions of Section 41-43-31 et seq. and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of the business.

(8) All the necessary expenses of any examination or audit performed or court proceedings conducted under the provisions of subsection (7) of this section shall be paid by the cemetery owner or owners or, if incorporated, its officers and directors, and if a sale of any cemetery is ordered by the court, the proceeds of the sale shall first be applied to the costs expended under the provisions of subsection (7) of this section.

SOURCES: Laws, 1982, ch. 371, § 2; Laws, 2009, ch. 549, § 20, eff from and after July 1, 2009.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in subsection (8) was corrected by substituting "subsection (7) of this section" for "subsection (8) of this section" both times it appears.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Qualifications for cemetery in existence prior to May 6, 1958 to be perpetual care cemetery, see § 41-43-39.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former § 41-43-49.

6. In general.

I. Under Current Law.

1.-5. [Reserved for future use].

II. Under Former § 41-43-49.

6. In general.

The chancery court properly authorized a sale of a portion of land conveyed for

public burial purposes, even if the trustee of the land had no express power to sell, where the business owned by the trustee was in extreme financial difficulties and the land in question was threatened with foreclosure, and with the sale accomplished, all liens would be released and a substantial fund would be created for continued operation of the cemetery; courts of equity have an inherent power to protect trusts and may order a sale of part of the trust property if necessary for the execution of trust purposes. *Hengen v. Perpetual Care Cems.*, 230 So. 2d 795 (Miss. 1970).

ATTORNEY GENERAL OPINIONS

Where a cemetery was never fully established and set up as a perpetual care cemetery, a court had jurisdiction and the authority to dismantle the perpetual care status of this cemetery, dissolve the corpo-

rate charter, and refund to the purchasers who had duly filed their paid receipts and contracts in the court whatever monies available. *Barlow*, Oct. 13, 2000, A.G. Op. #2000-0602.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am Jur. 14 Am. Jur. 2d, Cemeteries § 7.

CJS. 14 C.J.S., Cemeteries §§ 2, 9.

§ 41-43-39. Operation as perpetual care cemetery; procedure by existing organizations.

Any such organization, subject to the provisions of Sections 41-43-31 through 41-43-53, which is organized and engaged in business prior to May 6, 1958, shall be a perpetual care cemetery if:

(1) It shall, by July 5, 1958, have placed the entire principal and all accrued interest in any perpetual care fund then in its possession, or in the possession of trustees designated by it, in trust, to be administered as set forth in Sections 41-43-37 and 41-43-38. Should such perpetual care fund be less than ten percent (10%) of the gross selling price of all burial spaces, crypts or inurnment niches sold, such organization shall have deposited into

the perpetual care fund such additional money as may be necessary to cause the fund to be ten percent (10%) of all gross sales prior to May 6, 1958.

(2) It shall, at all times after May 6, 1958, comply with the requirements of a perpetual care cemetery as set forth in Sections 41-43-37 and 41-43-38.

SOURCES: Codes, 1942, § 5308-05; Laws, 1958, ch. 481, § 5; Laws, 1966, ch. 375, § 2; Laws, 1982, ch. 371, § 3, eff from and after July 1, 1982.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am Jur. 14 Am. Jur. 2d, Cemeteries, § 7.

§ 41-43-40. Perpetual care cemetery to maintain up-to-date record of persons buried in cemetery or entombed in mausoleum or columbarium; contents.

Every perpetual care cemetery shall maintain continuously and at all times an up-to-date record of the persons buried in the cemetery or entombed within a mausoleum or columbarium; the date of burial or entombment; a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche or mausoleum spaces for future use. Additionally, the Secretary of State may require those maps to be filed with the Secretary of State in any intervals as the Secretary of State may establish by rule or regulation.

SOURCES: Laws, 2009, ch. 549, § 25, eff from and after July 1, 2009.

§ 41-43-41. Nonperpetual care cemetery may become perpetual care cemetery; all cemeteries created after July 1, 2009, to be perpetual care cemeteries unless exempt.

Any nonperpetual care cemetery, after May 6, 1958, may become a perpetual care cemetery by complying with the requirement for a perpetual care cemetery as provided in Section 41-43-31 et seq. From and after July 1, 2009, all cemeteries created shall be perpetual care cemeteries unless exempt under the provisions of Section 41-43-31 et seq.

SOURCES: Codes, 1942, § 5308-06; Laws, 1958, ch. 481, § 6; Laws, 2009, ch. 549, § 21, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted “Section 41-43-31 et seq.” for “Sections 41-43-31 through 41-43-53”; and added the last sentence.

§ 41-43-43. Nonperpetual care cemeteries to call attention to such fact in all sales contracts and deeds.

All nonperpetual care cemeteries shall have printed at the top of all contracts of sales and deeds the words "this is a nonperpetual care cemetery."

SOURCES: Codes, 1942, § 5308-06; Laws, 1958, ch. 481, § 6, eff from and after passage (approved May 6, 1958).

§ 41-43-45. Lots sold to public to be free from liens; sale or transfer of lots by purchaser.

All lots and grave spaces offered for sale to the public shall be free and clear of liens or encumbrances. On payment of the purchase price, the purchaser shall be delivered a warranty deed or a perpetual easement for interment purposes.

Only the owner of a cemetery, or its agents, may sell or convey lots, plots, or parts thereof.

The purchaser of any lot, plot or part thereof may sell or transfer the same by giving notice thereof to the cemetery authorities or organization. Before acknowledging any transfer as valid, said cemetery authorities or organization may require the transferee to personally appear in the cemetery's principal place of business to accept any deed or transfer rights to the property conveyed, in order that the transfer may be properly enrolled on the books of the cemetery. A memorandum of all transfers shall be made on the books of the cemetery corporation or organization.

SOURCES: Codes, 1942, § 5308-07; Laws, 1958, ch. 481, § 7, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. 2d, Cemeteries §§ 31 et seq.

4B Am. Jur. Legal Forms 2d, Cemeteries § 54:91 (contract for sale of burial lot, memorials, markers, services, and maintenance).

4B Am. Jur. Legal Forms 2d, Cemeteries §§ 54:101-54:104 (conveyances of cemetery lots).

5A Am. Jur. Pl & Pr Forms (Rev), Cemeteries, Forms 21 et seq. (dedication and use of land for cemetery purposes).

CJS. 14 C.J.S., Cemeteries § 26.

§ 41-43-47. Cemetery rules and regulations.

The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care, control, management, restriction and protection of such cemetery.

SOURCES: Codes, 1942, § 5308-08; Laws, 1958, ch. 481, § 8, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. 2d, Cemeteries §§ 1 et seq.

4B Am. Jur. Legal Forms 2d, Cemeteries §§ 54:26 et seq (operation and management of cemeteries).

4A Am. Jur. Legal Forms 2d, Cemeteries § 54:211 (rules of perpetual care associations).

CJS. 14 C.J.S., Cemeteries § 26.

§ 41-43-49. Repealed.

Repealed by Laws, 1982, ch. 371, § 7, eff from and after July 1, 1982.

[Codes, 1942, § 5308-09; Laws, 1958, ch. 481, § 9]

Editor's Note — Former § 41-43-49 required all perpetual care cemeteries to file an annual accounting with the chancery court.

§ 41-43-51. Rule against perpetuities inapplicable to perpetual care funds.

The rule against perpetuities shall not be applicable to perpetual care funds provided for in Sections 41-43-31 through 41-43-53.

SOURCES: Codes, 1942, § 5308-10; Laws, 1958, ch. 481, § 10, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Charities § 19 et seq.

61 Am. Jur. 2d, Perpetuities and Restraints on Alienation §§ 1 et seq.

CJS. 70 C.J.S., Perpetuities §§ 18 et seq.

§ 41-43-53. Penalty for violations of Section 41-43-31 et seq.

Violation of any of the provisions of Sections 41-43-31 through 41-43-53 by any person, partnership, corporation or organization shall be punished by fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both.

SOURCES: Codes, 1942, § 5308-11; Laws, 1958, ch. 481, § 11; Laws, 1981, ch. 432, § 1, eff from and after passage (approved March 25, 1981).

Cross References — Application of penalties in this section to failure to file required records, reports or notices, see § 41-43-38.

§ 41-43-55. Business records of all perpetual care cemeteries to be available for inspection and examination by Secretary of State; inspection of cemetery sites.

The business records of any perpetual care cemetery, whether registered or not, the records of its financial institution, third-party administrator, or the

trustee's records related to the perpetual care cemetery shall be available for inspection and examination by the Secretary of State's examiners at all reasonable times, whether those records are located within this state or outside this state. The Secretary of State's examiners are authorized access to inspect cemetery sites subject to or potentially subject to this chapter wherever the same may be located.

SOURCES: Laws, 2009, ch. 549, § 22, eff from and after July 1, 2009.

§ 41-43-57. Application for release of trust principal for certain purposes under exceptional circumstances.

In exceptional circumstances only, a perpetual care owner can make an application to the Secretary of State for an order directing the trustee to release trust principal for the extended care, maintenance or improvements to the perpetual care cemetery for which interest funds are insufficient. Before issuing such an order, the Secretary of State shall satisfy himself that the request is for a major capital expenditure that will advance the perpetual care life of the cemetery without undue risk to the solvency of the perpetual care trust fund. Consistent with this section, this shall be the only instance in which a perpetual care trust corpus may be utilized for cemetery maintenance and improvements. In the consideration of the application, the Secretary of State may require the production of any records deemed necessary and relevant to the cemetery's application for a major capital expenditure.

SOURCES: Laws, 2009, ch. 549, § 23, eff from and after July 1, 2009.

CHAPTER 45

Sexual Sterilization [Repealed]

§§ 41-45-1 through 41-45-19. Repealed.

Repealed by Laws, 2008, ch. 442, § 50, effective from and after July 1, 2008.

§ 41-45-1. [Codes, 1930, § 4602; 1942, § 6957; Laws, 1928, ch. 294; Laws, 1984, ch. 472, § 5, eff from and after July 1, 1984.]

§ 41-45-3. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-5. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-7. [Codes, 1930, § 4603; 1942, § 6958; Laws, 1928, ch. 294.]

§ 41-45-9. [Codes, 1930, § 4604; 1942, § 6959; Laws, 1928, ch. 294; Laws, 1984, ch. 472, § 6, eff from and after July 1, 1984.]

§ 41-45-11. [Codes, 1930, § 4605; 1942, § 6960; Laws, 1928, ch. 294.]

§ 41-45-13. [Codes, 1930, § 4606; 1942, § 6961; Laws, 1928, ch. 294.]

§ 41-45-15. [Codes, 1930, § 4607; 1942, § 6962; Laws, 1928, ch. 294.]

§ 41-45-17. [Codes, 1930, § 4608; 1942, § 6963; Laws, 1928, ch. 294.]

§ 41-45-19. [Codes, 1930, § 4609; 1942, § 6964; Laws, 1928, ch. 294.]

Editor's Note — Former §§ 41-45-1 through 41-45-19 authorized the sterilization of mentally ill and mentally retarded patients, provided the process for ordering the sterilization of the patients, provided an appeal process, and limited the civil and criminal liability of persons legally participating in the process of sterilizing the patients.

CHAPTER 47

Transportation and Possession of Parakeets and Other Birds [Repealed]

§§ 41-47-1 through 41-47-17. Repealed.

Repealed by Laws, 1976, ch. 301, eff from and after Feb 12, 1976.
[Laws, 1956, ch. 307, §§ 1-9]

Editor's Note — Former § 41-47-1 required annual registration with the county health officer by persons breeding, raising, trading or dealing in birds of the budgerigar family.

Former § 41-47-3 called for the inspection of premises where budgerigars are kept, and for sanctions.

Former § 41-47-5 provided for the removal and isolation of birds suspected of having had contact with psittacosis, and for the laboratory examination of such birds.

Former § 41-47-7 required imported budgerigars to be leg banded for identification.

Former § 41-47-9 required budgerigars sold as pets to be leg banded for identification.

Former § 41-47-11 exempted from the leg banding requirements of the chapter birds in the possession of their owners and brought into the state for certain specified purposes.

Former § 41-47-13 contained shipping requirements for birds shipped into Mississippi.

Former § 41-47-15 regulated the housing and keeping of budgerigars in certain types of public establishments.

Former § 41-47-17 prohibited the transfer of birds afflicted with the disease, French Mould.

CHAPTER 49

Regulation of Hotels and Innkeepers

SEC.

- 41-49-1. Chapter to be enforced by State Board of Health.
- 41-49-3. "Hotel" defined.
- 41-49-5. Premises to be kept in clean and sanitary condition.
- 41-49-7. Copy of chapter to be posted in all hotels and inns.
- 41-49-9. Penalty.

§ 41-49-1. Chapter to be enforced by State Board of Health.

It shall be the duty of the Mississippi State Board of Health to enforce the provisions of this chapter. In order to discharge its powers and duties under this statute, the board may promulgate such rules and regulations as are reasonable and necessary.

SOURCES: Codes, Hemingway's 1917, § 2062; 1930, § 5102; 1942, § 7147; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 25, eff from and after July 1, 1983.

Cross References — State Board of Health Generally, see §§ 41-3-1 et seq.

General duties of State Board of Health, see § 41-3-15.

Duties of county health officer, see § 41-3-41.

Fire protection and safety regulations for hotels, see §§ 45-11-21 et seq.

Regulation of hotel business, see §§ 75-73-1 et seq.

RESEARCH REFERENCES

ALR. Liability of innkeeper to guest for injuries occasioned by defects in furnishings or other conditions in room or suite. 18 A.L.R.2d 973.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises. 52 A.L.R.3d 433.

Am Jur. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 25 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 48

(complaint, petition, or declaration — injury to guest — premises infected with contagious disease).

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 12.

Lawyers' Edition. Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution — Supreme Court cases. 107 L. Ed. 2d 1151.

§ 41-49-3. "Hotel" defined.

The term "hotel" shall mean and include any entity or individual engaged in the business of furnishing or providing one or more rooms intended or designed for dwelling, lodging or sleeping purposes that at any one time will accommodate transient guests and that are known to the trade as such and includes every building or other structure kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay or other consideration to transient guests regardless of the

number of rooms, units, suites or cabins available, excluding nursing homes or institutions for the aged or infirm as defined in Section 43-11-1.

SOURCES: Codes, Hemingway's 1917, § 2063; 1930, § 5103; 1942, § 7148; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 26; Laws, 2007, ch. 526, § 1, eff from and after passage (approved Apr. 18, 2007.)

Amendment Notes — The 2007 amendment substituted the present section for the former section, which read: "The term 'hotel' shall mean and include any hotel, inn, motel, tourist court, apartment house, rooming house, or other place where sleeping accommodations are furnished or offered for pay if four (4) or more rooms are available therein for transient guests, excluding nursing homes or institutions for the aged or infirm as defined in Section 43-11-1, and personal care homes as defined in Section 43-45-5(1)."

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel). violating due process clause or equal protection clause of Federal Constitution — Supreme Court cases. 107 L. Ed. 2d 1151.

Lawyers' Edition. Regulation of hotel, motel, or similar lodging establishment as

§ 41-49-5. Premises to be kept in clean and sanitary condition.

It shall be the duty of every keeper, manager or person in charge of the conduct of any hotel or inn in this state to keep all of the rooms used in connection with such hotel, or provided for the use of guests, in clean and sanitary condition; and to provide each guest with effective protection against flies, mosquitoes and other vermin.

SOURCES: Codes, Hemingway's 1917, § 2064; 1930, § 5104; 1942, § 7149; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 27, eff from and after July 1, 1983.

Cross References — Disinfection and sanitation of buildings, generally, see §§ 41-25-1 et seq.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 40 et seq.

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 12.

Lawyers' Edition. Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution — Supreme Court cases. 107 L. Ed. 2d 1151.

§ 41-49-7. Copy of chapter to be posted in all hotels and inns.

A copy of Sections 41-49-1 through 41-49-5, 41-49-9, shall be posted and kept posted in a conspicuous place in the general office or lobby, provided for the use of guests and patrons of every public inn and hotel.

SOURCES: Codes, Hemingway's 1917, § 2065; 1930, § 5105; 1942, § 7150; Laws, 1910, ch. 163.

RESEARCH REFERENCES

Am Jur. 9A Am. Jur. Legal Forms 2d, 6 Am. Jur. Proof of Facts, Innkeepers, Hotels, Motels, and Restaurants § 137:15 Proof No. 1 (status of premises as hotel). (notice of hotel or motel rules).

§ 41-49-9. Penalty.

Any owner, manager or person in charge of a hotel who shall fail, neglect or refuse to comply with any of Sections 41-49-1 through 41-49-7, or with any applicable rules or regulations of the state board of health, shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Each day's failure, neglect or refusal shall constitute a separate offense, and may be punished as such.

SOURCES: Codes, Hemingway's 1917, § 2065; 1930, § 5106; 1942, § 7151; Laws, 1910, ch. 163; Laws, 1983, ch. 522, § 28, eff from and after July 1, 1983.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 17.

Lawyers' Edition. Regulation of hotel, motel, or similar lodging establishment as violating due process clause or equal protection clause of Federal Constitution — Supreme Court cases. 107 L. Ed. 2d 1151.

CHAPTER 51

Animal and Poultry By-Products Disposal or Rendering Plants

SEC.

- 41-51-1. Short title.
- 41-51-3. Declaration of public policy.
- 41-51-5. Definitions.
- 41-51-7. Persons, matters or vocations not affected by chapter.
- 41-51-9. Powers and duties of the commissioner.
- 41-51-11. Regulation of transportation and storage.
- 41-51-13. Application for license to operate plant; fees.
- 41-51-15. Inspection of plant; issuance and term of licenses.
- 41-51-17. Additional inspections of non-complying applicants; fees therefor.
- 41-51-19. Location of plants.
- 41-51-21. When plant may be deemed suitable or sanitary.
- 41-51-23. Annual inspection of plant.
- 41-51-25. Proceedings to suspend or revoke license.
- 41-51-27. Recorded hearing.
- 41-51-29. Appeals.
- 41-51-31. Penalties.
- 41-51-33. Injunctive relief.

§ 41-51-1. Short title.

This chapter may be cited as The Animal and Poultry By-Products Disposal Law of 1964.

SOURCES: Codes, 1942, § 4575-101; Laws, 1964, ch. 214, § 1, eff from and after passage (approved March 26, 1964).

Cross References — Immunity of agricultural operations from nuisance actions, see § 95-3-29.

ATTORNEY GENERAL OPINIONS

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

§ 41-51-3. Declaration of public policy.

It is hereby declared to be the public policy of the State of Mississippi, acting through its legislature, to control and regulate the transportation over the highways of this state and the disposal of poultry by-products, slaughter house offal and wastes, and meat processing plant bones, meat scraps, fats, and all otherwise inedible meats and meat products, and the carcasses of dead animals, not slaughtered and intended for human food, to the end that the spread of poultry and animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be

conserved and protected against dangers, annoyances and nuisances that might arise from such poultry by-products and carcasses or from such transportation and disposal thereof, if the same be not regulated by law. This chapter is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This chapter shall be liberally construed to effect such policy and to promote such objects.

SOURCES: Codes, 1942, § 4575-103; Laws, 1964, ch. 214, § 3; Laws, 1966, ch. 232, § 2, eff from and after passage (approved May 31, 1966).

RESEARCH REFERENCES

CJS. 3A C.J.S., Animals §§ 170-173.

§ 41-51-5. Definitions.

For purposes of this chapter, the words and terms used herein shall have ascribed to them the following meanings:

(a) The term “disposal plant,” or “rendering plant,” or “plant” shall apply to and include any plant and all equipment thereof described or referred to in any section of this chapter that is constructed and intended to be operated for the disposal of poultry by-products, slaughter house offal and wastes, and meat processing plant bones, meat scraps, fats, and all otherwise inedible meats and meat products, the bodies of dead animals or parts thereof or excrements therefrom, by means of burying or burning or cooking or otherwise processing, whether for the purpose of producing or manufacturing by-products or otherwise. Such a term shall also include all substations of any such plant that are used in connection with such business solely for the temporary disposal or storage of such poultry by-products, dead bodies or parts thereof or excrements therefrom pending final delivery thereof to any such disposal plant or rendering plant, and shall also include all vehicles and equipment thereof used in Mississippi for the transportation of such bodies or parts thereof or excrements therefrom, bones, meat scraps, fats, and otherwise inedible meats and meat products to such plant for their disposal therein in the manner herein prescribed.

(b) The term “dead animals” shall mean the carcasses of dead animals, parts thereof or excrements therefrom.

(c) The word “person” shall include individuals, partnerships, corporations, associations and any other legal entities recognized by law.

(d) The term “poultry by-products” shall mean heads, feet, viscera, blood and feathers.

(e) The term “slaughter house offal and wastes” shall mean heads, feet, viscera, blood and any associated material therewith.

(f) The word “commissioner” shall mean the commissioner of agriculture and commerce, or his duly authorized deputies.

SOURCES: Codes, 1942, § 4575-102; Laws, 1964, ch. 214, § 2; Laws, 1966, ch. 232, § 1, eff from and after passage (approved May 31, 1966).

Cross References — Duties of commissioner of agriculture and commerce, generally, see § 69-1-13.

ATTORNEY GENERAL OPINIONS

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a “disposal plant” nor a “rendering plant” as defined in Section 41-51-5. Therefore, such a plant would not be

subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

RESEARCH REFERENCES

ALR. Animal rendering or bone-boiling plant or business as nuisance. 17 A.L.R.2d 1269.

§ 41-51-7. Persons, matters or vocations not affected by chapter.

Nothing contained in this chapter shall apply to or affect any of the following persons, matters, or vocations, to wit:

(a) Any persons legally engaged in the course of slaughtering, butchering, manufacturing, or selling, in any manner, any animal flesh and products, where such animals are killed for the purpose of being used solely for human consumption, or any persons engaged in transporting and disposing of the dead bodies of any such animals so killed or of any parts or products thereof to any persons solely for such purpose and use.

(b) Any person transporting, disposing of, or selling the hides or skins of animals, or tanning such hides or skins for himself or other persons.

(c) Any bodies of dead game, birds, fish, reptiles, or small animals of any kind, such as dogs, cats and small game.

(d) Slaughter houses and poultry processing plants which are engaged in the processing of animals or poultry for human consumption and which are operating a rendering plant under the supervision of the Mississippi Department of Agriculture and Commerce or the United States Department of Agriculture for the purpose of disposing of the waste and by-products from such plants only.

(e) Any governmental agency, collecting, transporting, or disposing of the bodies of any dead animals in any manner.

(f) Any person slaughtering animals on his own premises for the manufacture of pet foods, provided the products of same are not transported from his own premises until canned or packaged and properly labeled.

No provisions of any other laws or ordinances regulating any of the persons, matters or vocations aforesaid shall be affected or repealed by this chapter.

SOURCES: Codes, 1942, § 4575-104; Laws, 1964, ch. 214, § 4; Laws, 1966, ch. 232, § 3, eff from and after passage (approved May 31, 1966).

Cross References — Meat, meat-food and poultry regulation and inspection, see §§ 75-33-1 et seq.

Meat inspection, see §§ 75-35-1 et seq.

§ 41-51-9. Powers and duties of the commissioner.

The commissioner shall promulgate rules and regulations for the orderly administration and enforcement of this chapter, not inconsistent with the provisions thereof, and shall spread same upon the minutes to be kept in his office. The commissioner shall prescribe and supply the necessary and proper forms to be used in carrying out the provisions of this chapter.

The commissioner shall also obtain and keep in his office a minute book which shall be plainly identified as a record of the things had and done in carrying out the administration of this chapter, and for the proper recordation of the rules and regulations promulgated hereunder. Every licensee shall be furnished a copy of such rules and regulations when a license is issued. No amendment to a rule or regulation containing a penalty for the violation thereof shall become effective in less than thirty (30) days from the date of such amendment, and the date of such amendment must be spread upon the minutes of the commission.

SOURCES: Codes, 1942, § 4575-106; Laws, 1964, ch. 214, § 6, eff from and after passage (approved March 26, 1964).

Cross References — Regulations of transportation and storage, see § 41-51-11.

Suspension or revocation of license for violation of commissioner's regulations, see § 41-51-25.

Penalty for violation of commissioner's rules and regulations, see § 41-51-31.

Duties of commissioner of agriculture and commerce, generally, see § 69-1-13.

§ 41-51-11. Regulation of transportation and storage.

All poultry and meats and their component parts or products having physical characteristics of an edible product or capable of being used for or diverted to human food, and all poultry and meats and their products which have become unsound, unwholesome, or any other way unfit for human food including any rendered or unrendered grease, tallow or other fats, or the carcass or parts of carcass of any other animal or poultry which is unfit for human consumption shall not be transported or stored within the State of Mississippi until and unless the same shall have been decharacterized, denatured or otherwise destroyed for human food purposes. The commissioner shall promulgate rules and regulations necessary for the safe and proper handling of these poultry and animal parts or products in the interest of public health. The commissioner shall exercise the police powers of the state in the search, seizure, confiscation and destruction in the investigation and prosecution of violations of this section.

SOURCES: Codes, 1942, § 4575-103; Laws, 1964, ch. 214, § 3; Laws, 1966, ch. 232, § 2, eff from and after passage (approved May 31, 1966).

§ 41-51-13. Application for license to operate plant; fees.

It shall be the duty of every person operating a disposal plant or rendering plant to apply to the commissioner for a license to operate such establishment, and no person shall engage in this state in the business of operating such a disposal plant or rendering plant without first having obtained for each such disposal plant so operated by him, or in his behalf, a license pursuant to this chapter.

Said commissioner shall keep a record of all applications for licenses, showing all issued, denied or revoked by him and such other facts as he may prescribe. The application for a license shall be made on a form to be supplied by the commissioner, and shall show the location of each establishment and the name and address of the owner and the name and address of the lessor or lessee. Such application shall also set forth the particular method or methods which the applicant intends to employ, or is employing, in the transportation and in the disposal or processing of poultry by-products or the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information thereto as the commissioner, by his rules and regulations, may require.

The application shall have attached thereto the affidavit of the person applying for the licensing that the facts set forth therein are true and correct.

Such application shall be accompanied by an initial fee of fifty dollars (\$50.00) for each disposal plant or rendering plant, five dollars (\$5.00) for each substation operated in conjunction therewith, and five dollars (\$5.00) for each vehicle unit used in transportation of the poultry by-products, bodies of dead animals and products of said rendering operation. Like fees shall be paid to the commissioner annually for each renewal thereof. All fees collected under the provisions of this chapter shall be deposited in the general fund in the state treasury.

SOURCES: Codes, 1942, § 4575-105; Laws, 1964, ch. 214, § 5; Laws, 1970, ch. 255, § 7, eff from and after July 1, 1970.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 69 et seq.

CJS. 53 C.J.S., Licenses §§ 70-72 et seq.

§ 41-51-15. Inspection of plant; issuance and term of licenses.

Upon receipt of such application, the commissioner, or some person appointed and designated by him, shall, within thirty (30) days, inspect the plant, and the locality where such applicant is conducting or proposes to conduct such business, and shall ascertain whether such applicant is a

responsible and suitable person, financially and otherwise, to be entrusted with a license to conduct such business and that such applicant has fulfilled and complied with the requirements of all the sections of this chapter and of the rules and regulations authorized in this chapter relating to such business.

If such commissioner shall find that such applicant is such a responsible and suitable person to conduct such business, and that the plant of such applicant, and the methods of operation thereof comply with all the provisions of this chapter and with the rules and regulations authorized in this chapter, and that such business is located in a place permitted by this chapter, he shall thereupon issue to such applicant a certificate to that effect.

All licenses and certificates issued under this chapter shall remain effective until and unless voluntarily surrendered, or suspended or revoked, as provided in this chapter, conditioned, however, upon payment to the commissioner on or before July 15th subsequent to the year of issuance, of the required total annual license fee, which payment shall operate, without further application, to continue such licenses and certificates in full effect during each year for which such license fee shall be paid, unless sooner surrendered or suspended or revoked.

SOURCES: Codes, 1942, § 4575-105; Laws, 1964, ch. 214, § 5; Laws, 1970, ch. 255, § 7, eff from and after passage (approved July 1, 1970).

Cross References — License fees, see § 41-51-13.
 Annual inspection of plants, see § 41-51-23.
 Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.
 Appeal from decisions and orders of commissioner, see § 41-51-29.

RESEARCH REFERENCES

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| Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 69 et seq. | tion or application — for mandmaus — to compel issuance of license). |
| 16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 26, 33 (peti- | CJS. 53 C.J.S., Licenses §§ 70-72 et seq. |

§ 41-51-17. Additional inspections of non-complying applicants; fees therefor.

Whenever the commissioner, by his first inspection of the applicant's plant, shall find that the applicant has not complied with all the requirements of this chapter and of such rules and regulations, he shall at once notify the applicant in writing, delivered in person or by registered mail, with return receipt, specifying the particulars of such failure to comply therewith and of any further objections he may have. Upon being notified in like manner by the applicant in writing of such compliance and that such plant conforms to the requirements of this chapter and of such rules and regulations, the commissioner shall, within ten (10) days, make a similar second inspection thereof. The commissioner shall not be required to make more than two (2) of the aforesaid initial inspections of the same plant, substation and vehicles under

one (1) application and the original payment of fees unless he so desires. If one (1) or two (2) inspections additional to the second inspection are desired by the applicant in effecting a compliance by him with the requirements of this chapter, such applicant shall request the same in writing and pay in advance additional inspection fees of twenty-five dollars (\$25.00) for each such inspection so requested by him; for any further such inspections, he shall pay a fee of one hundred dollars (\$100.00) each.

In the event such applicant shall be refused a license and such refusal be finally sustained upon any appeal, no part of the fees paid by him shall be refunded, but all such fees shall belong to the State of Mississippi, as a part of its general fund.

SOURCES: Codes, 1942, § 4575-107; Laws, 1964, ch. 214, § 7, eff from and after passage (approved March 26, 1964).

Cross References — Annual inspection of plants, see § 41-51-23.

Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.

Appeal from decisions and orders of commissioner, see § 41-51-29.

§ 41-51-19. Location of plants.

No new plant shall be located or constructed, or any discontinued plant reconstructed or reopened, at any place in this state inside of, or within two (2) miles of the nearest point of, the existing corporate limits of any municipality with a population in excess of five hundred (500) according to the latest federal census, or within one (1) mile of the nearest boundary of the lands owned or controlled in connection either with any state, county, township, city or town park, or boulevard, or of any public school or hospital, or of any charitable, religious or educational institution.

Any existing plant which shall, on March 26, 1964, be in operation upon a site located in, or within the distance aforesaid from, any of the places or objects designated in this section shall not be denied a license solely by reason of its location.

SOURCES: Codes, 1942, § 4575-108; Laws, 1964, ch. 214, § 8; Laws, 1968, ch. 238, § 1, eff from and after passage (approved March 28, 1968).

ATTORNEY GENERAL OPINIONS

A plant which obtains chicken litter of live chickens from poultry growers to convert the litter into commercial feed for cattle is not a "disposal plant" nor a "rendering plant" as defined in Section 41-51-5. Therefore, such a plant would not be

subject to the provisions of Section 41-51-19 nor to any other provisions of the animal and poultry by-products disposal law of 1964, as set out in Section 41-51-1. Spell, May 3, 1996, A.G. Op. #96-0284.

§ 41-51-21. When plant may be deemed suitable or sanitary.

No disposal plant or rendering plant shall be deemed a suitable or sanitary place for disposing of poultry by-products or the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintenance. Any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor, detrimental to human, animal, agricultural or aquatic life, shall not be permitted to escape therefrom until first treated as herein specified. All sewage and plant wastes shall be disposed of according to recognized and accepted sanitary engineering methods which will not create a public health hazard or unsanitary situation so as to be a nuisance.

(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers. All tanks shall be airtight except proper escapes for live steam, passing through the tanks during cooking, which steam shall be condensed by use of cold water condensers. All such equipment and any other equipment which may be invented, manufactured and installed for use in disposal or rendering plants shall be so constructed and maintained as to prevent any avoidable escape of odors into the air.

(c) All skinning and dismembering of bodies shall be done within such building and in such manner and shall be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies or any parts and contents thereof, and all such bodies and all parts and contents thereof shall be disposed of within twenty-four (24) hours after delivery to such plant, by some method herein specified, except where rendered impossible by accident or other casualty preventing the operation of the plant, or except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant. In such events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

(d) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted at all times as not to create and continue unnecessarily a public nuisance.

SOURCES: Codes, 1942, § 4575-109; Laws, 1964, ch. 214, § 9, eff from and after passage (approved March 26, 1964).

Cross References — Suspension or revocation of license for unsanitary conditions, see § 41-51-25.

Nuisances, generally, see §§ 95-3-1 et seq.

RESEARCH REFERENCES

ALR. Animal rendering or bone-boiling plant or business as nuisance. 17 A.L.R.2d 1269.

Am Jur. 58 Am. Jur. 2d, Nuisances § 86.

8 Am. Jur. Proof of Facts, Nuisances, Proof No. 1 (suit to enjoin nuisance affecting residence).

6 Am. Jur. Proof of Facts 3d, Act of God, §§ 1 et seq.

§ 41-51-23. Annual inspection of plant.

The commissioner, in person or by anyone authorized by him, shall inspect each plant and place licensed under this chapter, at least once each year, and as often as he may deem necessary, and shall see that the licensees and all other persons comply with this chapter and conduct such business in conformity to this chapter and to the rules and regulations made and published by him pursuant thereto.

SOURCES: Codes, 1942, § 4575-110; Laws, 1964, ch. 214, § 10, eff from and after passage (approved March 26, 1964).

§ 41-51-25. Proceedings to suspend or revoke license.

The commissioner shall have power to suspend for any fixed period, or to revoke, the license held by any licensee under this chapter in the event that such licensee shall violate and fail or refuse to obey any of the provisions of this chapter, or of the rules and regulations promulgated by the commissioner, or in the event the state board of health shall certify in writing to the commissioner that any particular disposal plant or rendering plant is a menace to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty (30) days after such charges of said board are so filed.

Before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and a hearing shall be had before the commissioner, or his authorized representative, at such time and place as he may fix, upon at least ten (10) days' notice in writing to the licensee, to determine whether such license shall be suspended or revoked. Such notice may be served either by registered mail, with return receipt, addressed to such licensee at the address shown in his application, or in the manner provided by law for the service of a summons. At the time and place fixed for the hearing, the licensee may appear in person and by counsel and such charges shall be deemed denied, without any answer thereto. The licensee may, however, file an answer if he so desires. Any other person whose interest would be adversely affected either by the suspension or revocation of such license or by its continuing in effect may intervene and offer evidence at such hearings. The hearing shall be conducted in a summary manner, under such procedure as the rules and regulations may prescribe, and the commissioner, or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to present all defenses available to him. When a hearing under this section is conducted

before a representative of the commissioner, a written report and summary of the evidence at such hearing shall be made by him to the commissioner, with recommendation for action thereon. The commissioner, after such hearing before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license. Such order shall be entered on his records and written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee.

SOURCES: Codes, 1942, § 4575-111; Laws, 1964, ch. 214, § 11, eff from and after passage (approved March 26, 1964).

Cross References — State Board of Health, see §§ 41-3-1 et seq.

Request for recorded hearing on decisions and orders of commissioner, see § 41-51-27.

Appeal from decisions and orders of commissioner, see § 41-51-29.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. 2d, Administrative Law §§ 298 et seq.

51 Am. Jur. 2d, Licenses and Permits §§ 88 et seq.

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49 (proceedings relating to suspension or revocation of license).

16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63 (proceedings for reinstatement of license).

CJS. 53 C.J.S., Licenses §§ 82-86, 88, 89, 91, 93-95, 97-99.

§ 41-51-27. Recorded hearing.

Any licensee or other interested person, aggrieved by a decision or order of the commissioner made under the provisions of this chapter but entered without a recorded hearing, may make written request to the commissioner for a recorded hearing thereon. The commissioner shall hear such party or parties within thirty (30) days after receipt of such request and shall give not less than fifteen (15) days' written notice of the time and place of the hearing. Within thirty (30) days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reason therefor. Pending such hearing, and decision thereon, the commissioner shall suspend or postpone the effective date of his previous order.

The proceedings, evidence and decision or order of the commissioner in any hearing requested pursuant to the preceding paragraph shall be recorded, and any hearing ordered by the commissioner under the provisions of this chapter may, at his direction or upon the request of a party thereto, be so recorded. Nothing herein shall require the observance at any hearing of formal rules of pleading or evidence.

SOURCES: Codes, 1942, § 4575-112; Laws, 1964, ch. 214, § 12, eff from and after passage (approved March 26, 1964).

§ 41-51-29. Appeals.

Any licensee or other person, aggrieved by any final decision or order of the commissioner made or entered in or on such decision or order may appeal to the circuit court of the First Judicial District of Hinds County, by filing with the commissioner a petition for review within thirty (30) days from the date of such decision or order, specifying the grounds upon which he relies, and by filing with the clerk of said court a bond with such surety or sureties and in such penalty as shall be approved by the commissioner or the clerk or judge of said court, conditioned that such appellant will pay all costs of the appeal in event such appeal is unsuccessful. The state may appeal from such decision or order in like time and manner without giving bond. Such appeal, and appeal bond, shall not operate as a supersedeas, but the commissioner, or the judge of said circuit court (or any judge of the supreme court in event of appeals thereto) may grant a supersedeas upon such terms and conditions and upon such bond as may be deemed proper. All appeal and supersedeas bonds shall be payable to the state and may from time to time and upon cause shown be ordered increased or ordered replaced by other bonds with approved sureties, and may be enforced in the manner provided by law for the enforcement of other similar bonds. In perfecting such an appeal, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from circuit courts to the supreme court, shall be applicable. The cause shall be triable as a preference cause either in term time or vacation, and at such time and place as may be fixed by the circuit judge. The appeal shall be upon the record, which shall contain the petition for review and the proceedings, evidence, and decision or order appealed from, and the same shall be signed by the commissioner or the person acting as his representative and by him transmitted forthwith to said circuit court. Such court shall hear and determine the case presented by such record, and may affirm or set aside the decision or order from which the appeal was taken and shall thereupon certify its judgment to the commissioner. In case the decision or order of the commissioner be set aside by the circuit court, such court shall enter and render such judgment, decision or order as the commissioner should have rendered, unless it be necessary, in consequence of its decision, that some decision or ruling entirely administrative or legislative in nature be made, or that some fact or question of fact not appearing in or not settled by the record be ascertained or determined, in which cases the matter shall be remanded to the commissioner for further proceedings and action or decision in accord with the judgment and direction of such circuit court from which further proceedings, action, or decision of the commissioner further appeals may be taken to the circuit court in the manner provided in this section. Costs on an appeal shall be awarded as in other cases. Any party, including the state and the commissioner, aggrieved by a final decision of said circuit court, may appeal to the supreme court in the manner provided by law.

SOURCES: Codes, 1942, § 4575-112; Laws, 1964, ch. 214, § 12, eff from and after passage (approved March 26, 1964).

Cross References — Jurisdiction of circuit court, see § 9-7-81.

RESEARCH REFERENCES

Am Jur. 16A Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23 et seq (judicial review of refusal of license).
 Licenses and Permits, Forms 43, 46, 48 (proceedings for review of revocation of license).
 16A Am. Jur. Pl & Pr Forms (Rev),

§ 41-51-31. Penalties.

Violation of any of the provisions of this chapter, or the rules and regulations made in pursuance thereof, is hereby made a misdemeanor, and any person, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

SOURCES: Codes, 1942, § 4575-113; Laws, 1964, ch. 224, § 13, eff from and after passage (approved March 26, 1964).

Cross References — Rules and regulations of commissioner, see § 41-51-9.
 Criminal offense for sale of flesh of dead, diseased or unclean animals as food, see § 97-27-19.
 Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS. 3A C.J.S., Animals §§ 170-173.

§ 41-51-33. Injunctive relief.

The Attorney General of the State of Mississippi may bring an action in the name of the people of the State of Mississippi to enjoin the continued operation of any disposal or rendering plant found to be operating within this state for which no license has been obtained under this chapter or for which such license has been suspended or revoked.

SOURCES: Codes, 1942, § 4575-114; Laws, 1964, ch. 214, § 14, eff from and after passage (approved March 26, 1964).

Cross References — Attorney general, see §§ 7-5-1 et seq.
 Injunctions, generally, see §§ 11-13-1 et seq.

CHAPTER 53

Rabies Control in Dogs and Cats

SEC.

- 41-53-1. Rabies inoculation of dogs and cats required.
- 41-53-3. Repealed.
- 41-53-5. Who may administer virus.
- 41-53-7. Tags.
- 41-53-9. Certificate of inoculation; records.
- 41-53-11. Dogs running at large.
- 41-53-13. Penalties.

§ 41-53-1. Rabies inoculation of dogs and cats required.

Every person in the State of Mississippi who owns, or has in his or her possession, any dog or cat of the age of three (3) months or over shall have said dog or cat inoculated (vaccinated) against rabies as provided herein with the recommended dosage of an anti-rabic virus (vaccine) approved by the State Board of Health, and it shall be unlawful for any person within the State of Mississippi to own or have in his or her possession within the State of Mississippi any dog or cat three (3) months of age or over which has not been inoculated (vaccinated) against rabies with the approved dosage of an approved anti-rabic virus (vaccine). It shall be the duty of every person in this state so owning or having in his or her possession a dog or cat to have said dog or cat inoculated (vaccinated) immediately after said dog or cat has reached the age of three (3) months, and it shall be said person's further duty to have said dog or cat so inoculated (vaccinated) thereafter as required by the State Board of Health. For a failure to comply with this section said person shall be subject to the penalties provided in Section 41-53-13.

SOURCES: Codes, 1942, § 6815; Laws, 1938, ch. 357, § 1; Laws, 1950, ch. 459, § 1; Laws, 1983, ch. 522, § 29, eff from and after July 1, 1983.

Cross References — State board of health generally, see §§ 41-3-1 et seq.

RESEARCH REFERENCES

ALR. Keeping of dogs as enjoynable nuisance. 11 A.L.R.3d 1399.

Liability for injuries caused by cat. 68 A.L.R.4th 823.

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 134, 135 (com-

plaint, petition, or declaration — knowledge of dog's vicious propensities — rabies disease in county-injury to infant).

15 Am. Jur. Proof of Facts, Rabies Management and Treatment § 31 (proof of death from rabies).

§ 41-53-3. Repealed.

Repealed by Laws, 1983, ch. 522, § 50, eff from and after July 1, 1983.

[Codes, 1942, § 6816; Laws, 1938, ch. 357, § 2; Laws, 1950, ch. 459, § 2]

Editor's Note — Former § 41-53-3 pertained to the administering of vaccine in accordance with this chapter, and with the procurement and storage thereof.

§ 41-53-5. Who may administer virus.

All inoculations (vaccinations) done in accordance with this chapter must be done by either a licensed veterinarian or other competent person granted a permit to administer virus (vaccine) by the state board of health.

SOURCES: Codes, 1942, § 6817; Laws, 1938, ch. 357, § 3; Laws, 1983, ch. 522, § 30, eff from and after July 1, 1983.

§ 41-53-7. Tags.

It shall be the duty of the manufacturer or manufacturers contracted with to furnish virus (vaccine) to furnish with each ampoule (dose) of virus (vaccine), a suitable metal tag approved by the state board of health, which may be securely bradded to the collar of the dog inoculated (vaccinated). Said tag shall have stamped thereon the serial number of vaccination and the year in which said dog was inoculated. This tag shall be furnished to the owner when said dog is inoculated (vaccinated), and it shall be his duty to securely attach same to the collar, and each dog owned by or in the possession of any person within the State of Mississippi shall wear at all times a collar or other device which shall have securely bradded on to it the metal tag provided for above. Any such tag shall not be transferable to any dog other than the dog for which it was issued.

SOURCES: Codes, 1942, § 6818; Laws, 1938, ch. 357, § 4.

§ 41-53-9. Certificate of inoculation; records.

All persons administering virus (vaccine) in accordance with this chapter shall furnish the owner of each dog or cat inoculated (vaccinated) a certificate of inoculation (vaccination) for each dog or cat inoculated (vaccinated) indicating the breed of each dog or cat inoculated (vaccinated), the sex of each dog or cat inoculated (vaccinated), and the markings and the serial number of the tag attached to the collar or some other device on each dog. Persons administering virus (vaccine) in accordance with this chapter shall maintain records of each inoculation, indicating the owner of each dog or cat inoculated (vaccinated), the breed of each dog or cat inoculated (vaccinated), the sex of each dog or cat inoculated (vaccinated), and the markings and serial number of the tag furnished to the owner of each dog.

SOURCES: Codes, 1942, § 6820; Laws, 1938, ch. 357, § 6; Laws, 1983, ch. 522, § 31, eff from and after July 1, 1983.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 112.

§ 41-53-11. Dogs running at large.

(1) It shall be lawful and it shall be their duty for any sheriff, conservation officer or peace officer of a county or municipality to kill any dog above the age of three (3) months found running at large on whose neck there is no such collar and tag. No action shall be maintained by the owner for such killing. However, it shall be the duty of said officer who finds a dog or dogs running at large to first keep said dog or dogs for a period of five (5) days and notify the sheriff of said county that he has said dog or dogs, giving the sheriff a description of same. If anyone proves himself to be the owner of same, he shall pay said officer the sum of fifty cents (50¢) before the dog is delivered to the owner.

(2) It shall be the duty of any sheriff, conservation officer or peace officer of a county or municipality to kill or otherwise destroy any and all dogs above the age of three (3) months which are running at large and have not been inoculated (vaccinated) as required in this chapter.

SOURCES: Codes, 1942, §§ 6819, 6821; Laws, 1938, ch. 357, § 5; Laws, 1974, ch. 569, § 5; Laws, 1983, ch. 522, § 32, eff from and after July 1, 1983.

Cross References — Authority of counties to control and impound dogs running at large, see § 19-5-50.

Authority of municipalities to control animals running at large and to establish city pounds, see § 21-19-9.

Estrays, generally, see §§ 69-13-301 et seq.

ATTORNEY GENERAL OPINIONS

An officer must keep all dogs described in Section 41-53-11 for five days and notify the sheriff before killing the dogs. If a dog was obviously rabid and a clear and present danger to the public safety, the five day waiting period would not apply. Stone, April 19, 1996, A.G. Op. #96-0239.

Section 41-53-11(2) does not contain the liability protection that is found in subsection (1). Therefore, an officer that destroys a dog under subsection (2), without waiting the five day period, may subject himself to liability for such action. Stone, April 19, 1996, A.G. Op. #96-0239.

Section 19-3-40 allows a county to contract with a humane society to maintain

an animal shelter. Any contract providing for these services would be in addition to, and would not supplant, the sheriff's duties as provided in this section. Spragin, Jan. 21, 2004, A.G. Op. 03-0701.

A sheriff could appoint the county animal control officer to be a deputy for the purpose of handling any situation regarding a rabid or vicious animal. However, that if such officer is declared a deputy sheriff, she would be an agent of the sheriff and the sheriff would be responsible for her actions. Jewell, Aug. 20, 2004, A.G. Op. 04-0290.

RESEARCH REFERENCES

ALR. Civil liability of landowner for killing or injuring trespassing dog. 15 A.L.R.2d 578.

Dog owner's liability for damages from

motor vehicle accident involving attempt to avoid collision with dog on highway. 41 A.L.R.3d 888.

Construction and application of ordi-

nances relating to unrestrained dogs, cats, or other domesticated animals. 1 A.L.R.4th 994.

Liability of owner of dog for dog's biting veterinarian or veterinarian's employee. 4 A.L.R.4th 349.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers". 80 A.L.R.4th 70.

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21-26 (proceedings for destruction of diseased animals).

1 Am. Jur. Proof of Facts, Animals, Proof No. 5 (justifiable destruction of animal).

CJS. 3A C.J.S., Animals §§ 138, 288.

§ 41-53-13. Penalties.

The failure or refusal of any person to comply with any of the provisions of this chapter shall constitute a misdemeanor, and the offender shall, on conviction thereof, be fined for the first offense in a sum not to exceed five dollars (\$5.00) and for the second offense in a sum not to exceed twenty-five dollars (\$25.00) and for the third offense a sum not to exceed fifty dollars (\$50.00), together with all costs. It shall be the duty of the sheriffs, conservation officers and all peace officers of the counties and municipalities of Mississippi to enforce this chapter. It shall be the duty of the county attorneys and district attorneys of this state to prosecute all violators of this chapter.

SOURCES: Codes, 1942, § 6821; Laws, 1938, ch. 357, § 7; Laws, 1974, ch. 569, § 6, eff from and after passage (approved April 24, 1974).

Cross References — Authority of municipalities to control animals running at large and to establish city pounds, see § 21-19-9.

Requirement that dogs and cats be inoculated against rabies, see § 41-53-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

Any animal control officer who is a peace officer or a deputy sheriff has the authority and duty to enforce the provisions of Title 41, Chapter 53 of the Missis-

sippi Code; such chapter may be enforced by county tickets or affidavits filed in the proper court. Eger, Nov. 9, 2001, A.G. Op. #01-0680.

RESEARCH REFERENCES

ALR. Landlord's liability to third person for injury resulting from attack by

dangerous or vicious animal kept by tenant. 81 A.L.R.3d 638.

CHAPTER 55

Public Ambulance Service

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| Public Ambulance Services by Governmental Entities | 41-55-1 |
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PUBLIC AMBULANCE SERVICES BY GOVERNMENTAL ENTITIES

SEC.

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|-----------|---|
| 41-55-1. | Maintenance and operation of public ambulance service by political entities. |
| 41-55-2. | Defrayal of cost of public ambulance service. |
| 41-55-3. | Joint service by counties and municipalities; contracts, apportionment of ownership of property and costs of operation. |
| 41-55-5. | Casualty and liability insurance in connection with ambulance service; partial waiver of immunity. |
| 41-55-7. | Effect of existence of adequate private ambulance service; public subsidies. |
| 41-55-9. | Maintenance and operation of ambulance service by certain hospitals. |
| 41-55-11. | Repealed. |

§ 41-55-1. Maintenance and operation of public ambulance service by political entities.

The board of supervisors of any county and the governing authorities of any city, town, or any political subdivision thereof, either separately or acting in conjunction, in their discretion and upon finding that adequate public ambulance service would not otherwise be available, may own, maintain, and operate a public ambulance service as a governmental function, fix and collect charges therefor, and adopt, promulgate and enforce reasonable rules and regulations for the operation of said service. Any political subdivision, or parts thereof, acting hereunder may contract and otherwise cooperate with any department or agency of the United States Government or the State of Mississippi, or any county, city, town, or supervisors district of the same, or other counties of the State of Mississippi in carrying out any of the powers herein conferred or otherwise effectuating the purposes of Sections 41-55-1 through 41-55-11 and in so doing accept gifts, money, and other property of whatever kind.

SOURCES: Codes, 1942, § 2997-21; Laws, 1968, ch. 290, § 1, eff from and after passage (approved July 19, 1968).

Editor's Note — Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1992, ch. 491, § 26, eff from and after October 1, 1993.

Cross References — Effect of existence of adequate private ambulance service on contracts for public ambulance service, see § 41-55-7.

Operation and maintenance of ambulance service by public hospitals, see § 41-55-9.

Air ambulance service districts, see §§ 41-55-31 et seq.

Emergency medical services law, see §§ 41-59-1 et seq.

Advanced life support personnel and services, see §§ 41-60-11 et seq.

ATTORNEY GENERAL OPINIONS

Statute authorizes city to charge user fee to individuals who actually use ambulance service but does not authorize city to charge availability fee; general fee charged to all homeowners and businesses regardless of whether or not they use service would in actuality be tax for support of ambulance service. Hancock, Oct. 4, 1990, A.G. Op. #90-0729.

County may contract with Regional Medical Center for ambulance service. Walters, Sept. 2, 1992, A.G. Op. #92-0648.

It is within the power of a city to enter into a contract with a local hospital to provide ambulance services and to set a reasonable rate for those services. Thomas, Nov. 19, 1999, A.G. Op. #99-0626.

§ 41-55-2. Defrayal of cost of public ambulance service.

The board of supervisors of counties having a population of not more than twenty-two thousand (22,000) nor less than fifteen thousand (15,000) as shown by the 1970 federal census and having an assessed valuation in excess of Twenty Million Dollars (\$20,000,000.00) in 1970 and being traversed by Interstate Highway No. 55, may, in the discretion of the board, set aside, appropriate and expend moneys from the general fund to be used solely for defraying the cost of providing public ambulance service as authorized by Sections 41-55-1 through 41-55-11.

SOURCES: Codes, 1942, § 2997-21; Laws, 1972, ch. 462, §§ 1, 2; Laws, 1986, ch. 400, § 25, eff from and after October 1, 1986.

Editor's Note — Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1991, ch. 491, § 26, eff from and after October 1, 1993.

§ 41-55-3. Joint service by counties and municipalities; contracts, apportionment of ownership of property and costs of operation.

In acting jointly the board of supervisors of any such county acting for the county or supervisors district of the county, and the governing authorities of any city or town, acting for the city or town, are hereby authorized and empowered to contract with each other, for and on behalf of the political subdivisions or parts thereof which each represents, with respect to any and all things related to the matters and things authorized in Sections 41-55-1 through 41-55-11, and particularly to apportion and prorate the ownership of the property acquired or to be acquired in such a joint undertaking, and to determine the proportionate part of the cost of maintenance, support and operation to be assumed by each.

SOURCES: Codes, 1942, § 2997-22; Laws, 1968, ch. 290, § 2, eff from and after passage (approved July 19, 1968).

Editor's Note — Section 41-55-11 referred to in this section was repealed by its own terms by Laws of 1992, ch. 491, § 26, eff from and after October 1, 1993.

Cross References — Emergency medical services law, see §§ 41-59-1 et seq.

§ 41-55-5. Casualty and liability insurance in connection with ambulance service; partial waiver of immunity.

The governing authority of or for any such political subdivision or part thereof shall have further power and authority to obtain insurance against casualty to the property used or useful in such public ambulance service.

SOURCES: Codes, 1942, § 2997-23; Laws, 1968, ch. 290, § 3; Laws, 1984, ch. 495, § 18; reenacted and amended, Laws 1985, ch. 474, § 26; Laws, 1986, ch. 438, § 27; Laws, 1987, ch. 483, § 28; Laws, 1988, ch. 442, § 25; Laws, 1989, ch. 537, § 24; Laws, 1990, ch. 518, § 25; Laws, 1991, ch. 618, § 24; Laws, 1992, ch. 491 § 25, eff from and after passage (approved May 12, 1992).

Cross References — Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Emergency medical services law, see §§ 41-59-1 et seq.

RESEARCH REFERENCES

ALR. Liability of operator of ambulance service for personal injuries to person being transported. 68 A.L.R.4th 14.

§ 41-55-7. Effect of existence of adequate private ambulance service; public subsidies.

If there is in operation an adequate privately run ambulance service, then the governing authorities are hereby prohibited from contracting for ambulance services to be run by the public body. The governing authorities may, however, subsidize such existing privately run ambulance service, in their discretion, if they deem necessary to keep such service in operation.

SOURCES: Codes, 1942, § 2997-25; Laws, 1968, ch. 290, § 5, eff from and after passage (approved July 19, 1968).

Cross References — Emergency medical services law, see §§ 41-59-1 et seq.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 41-55-7 did not prohibit the county board of supervisors from awarding an ambulance contract to another private entity just because there was an existing adequate privately run ambulance service that had previously been awarded the contract. *Malone v. Leake County Bd. of Supervisors*, 841 So. 2d 141 (Miss. 2003).

A county board of supervisors' decision to award a contract for ambulance service

to a public agency evaded § 41-55-7, even though the board found that a need existed for the ambulance service "which would not otherwise be available," where there was no finding that an adequate privately run ambulance service was unavailable. *Cook v. Board of Supvrs.*, 571 So. 2d 932 (Miss. 1990).

Section 41-55-7 does not speak to the relative rights or standing of private ambulance services among themselves, nor does it afford criteria for preferring one

over another. Rather, the statute addresses only the relative standing of private entrepreneurs as a whole vis-a-vis public providers and mandates private preference where at least one such private entity may provide probable proof that its

ambulance service is and will be adequate. The statute regards the matter of contract price essentially irrelevant. *Cook v. Board of Supvrs.*, 571 So. 2d 932 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

A county may contract with a privately run out-of-county ambulance service if the board of supervisors finds, consistent with fact, that such ambulance service is adequate and if the subsidy is necessary to keep such services in operation. *Lee*, May 15, 1992, A.G. Op. #92-0370.

Section 41-55-7 authorizes a municipality to appropriate a specific sum which is

included in the municipal budget to a privately run ambulance service, the statute does not authorize a municipality to execute a continuing guaranty to a governmental entity or other lender to secure funds loaned to a privately run ambulance service. *Elliott*, May 18, 1995, A.G. Op. #95-0311.

§ 41-55-9. Maintenance and operation of ambulance service by certain hospitals.

In addition to other authority specifically conferred on it or arising by necessary implication, the board of commissioners or board of trustees of any hospital owned separately or jointly by one or more of such counties, cities, towns, or supervisors districts of the same or other such counties as defined in Section 41-55-1 may, in its discretion and upon a finding that adequate ambulance service would not otherwise be available, own, operate, and maintain a public ambulance service as an integral part of its governmental function of operating and maintaining a hospital and, in so doing, shall possess and may exercise and enjoy the same authority, powers, rights, privileges and immunities with respect to the operation and maintenance of said service as it possesses and may exercise and enjoy with respect to the operation and maintenance of other departments of the hospital, including the right to fix and collect charges for such ambulance service, and to adopt, promulgate and enforce reasonable rules and regulations for the operation of said service.

In addition to the foregoing, the board of commissioners or board of trustees of any such public hospital may, in its discretion and upon a finding that adequate public ambulance service would not otherwise be available, either contract with the governing authority or authorities of one or more other such public hospitals, with the governing authority or authorities of one or more private nonprofit hospitals, or with the governing authorities of a combination of both types of hospitals as aforesaid, for the joint ownership, operation and maintenance of a public ambulance service. Moreover, the board of commissioners or board of trustees of any such public hospital, upon a further finding that it is necessary or expedient to do so, may, individually or jointly with the governing authority or authorities of either or both types of hospitals as aforesaid, organize and participate in the ownership of a nonprofit corporation organized under the laws of the State of Mississippi for the specific

purpose of providing public ambulance service. Any such contract and any such charter of incorporation shall include specific provisions for retaining majority control in the public hospital or hospitals involved, to preserve and protect the funds and property of the public hospital or hospitals involved and to provide for termination of the arrangement upon reasonable notice by the public hospital or hospitals.

SOURCES: Codes, 1942, § 2997-24; Laws, 1968, ch. 290, § 4, eff from and after passage (approved July 19, 1968).

Cross References — Effect of existence of adequate private ambulance service on contracts for public ambulance service, see § 41-55-7.

ATTORNEY GENERAL OPINIONS

Board of trustees of community hospital may increase its fees for public ambulance service which is part of hospital and is not required to obtain approval or consent of governing authorities of municipality in county which hospital serves. Nichols, Sept. 10, 1992, A.G. Op. #92-0658.

Board of trustees of community hospital has authority to maintain ambulance ser-

vice as a part of community hospital and to fix rates for this service; municipal ordinance which provides that rates for ambulance services of community hospital set by board of trustees must be approved by governing authorities of city is inconsistent with statute. Hayslett, Oct. 14, 1992, A.G. Op. #92-0789.

§ 41-55-11. Repealed.

Repealed by its own terms by Laws, 1992, ch. 491, § 26, eff from and after October 1, 1993.

[Codes, 1942, § 2997-26; Laws, 1968, ch. 290, § 6; repealed, Laws, 1984, ch. 495, § 36, and repealed by Laws, 1984, 1st Ex Sess, ch. 8, § 3; reenacted and amended, Laws, 1985, ch. 474, § 43; Laws, 1986, ch. 438, § 28; Laws, 1987, ch. 483, § 29; Laws, 1988, ch. 442, § 26; Laws, 1989, ch. 537, § 25; Laws, 1990, ch. 518, § 26; Laws, 1991, ch. 618, § 25; Laws, 1992, ch. 491 § 26]

Editor's Note — Former § 41-55-11 related to minimum insurance coverage for ambulance service operators and waiver of immunity to the extent of such coverage.

AIR AMBULANCE SERVICE DISTRICTS

SEC.

- 41-55-31. Legislative declaration.
- 41-55-33. Establishment of air ambulance service districts authorized; boundaries.
- 41-55-35. Publication of notice of intention; election.
- 41-55-37. Board of directors established; qualifications and term.
- 41-55-39. Oath of office.
- 41-55-41. Compensation.
- 41-55-43. Officers; bond.
- 41-55-45. Powers of district.
- 41-55-47. Funds for support and maintenance of district.

- 41-55-49. Payment to district of tax avails or appropriations; advances for preliminary expenses.
- 41-55-51. Acceptance of funds from public or private sources; repayment.
- 41-55-53. Deposit of funds.
- 41-55-55. Additional counties may join.
- 41-55-57. Rates for services.

§ 41-55-31. Legislative declaration.

It is hereby declared as a matter of legislative determination that deaths from highway traffic accidents have reached an alarming rate, that ambulance service is not readily available to many rural outposts in the state, that many deaths could be prevented if prompt medical attention were provided, and that the provision of air ambulance service would be for the general welfare of the entire population of the State.

SOURCES: Codes, 1942, § 2997-41; Laws, 1971, ch. 457, § 1, eff from and after passage (approved March 29, 1971).

Cross References — Operation and maintenance of public ambulance service, see §§ 41-55-1 et seq.

Aircraft for use of Governor, state departments and agencies, see §§ 61-13-1 et seq.

§ 41-55-33. Establishment of air ambulance service districts authorized; boundaries.

The boards of supervisors of two or more counties are hereby authorized to act jointly in the establishment of an air ambulance service district by spreading upon their minutes by resolution their intention to create the district. The boundaries of the districts as they are established shall coincide with the nine districts of the Mississippi Highway Safety Patrol as constituted on March 29, 1971.

SOURCES: Codes, 1942, § 2997-42; Laws, 1971, ch. 457, § 2, eff from and after passage (approved March 29, 1971).

Cross References — Emergency medical services law, see §§ 41-59-1 et seq.
State highway safety patrol, see §§ 45-3-1 et seq.

§ 41-55-35. Publication of notice of intention; election.

Notice of the intention to create an air ambulance service district shall be published at least three (3) times during a period of twenty-one (21) days in one (1) newspaper circulated in the county in which shall be stated the counties cooperating to create the district, the date the district shall be created, and the purpose of the district. If twenty percent (20%) or one thousand five hundred (1,500) of the qualified electors of said county shall file a written protest against the creation of said district on or before the date specified in such resolution then an election on the question of said county joining said district shall be called and held as provided by law. The determination of said issue

shall be determined by a majority of the qualified electors voting in said election.

SOURCES: Codes, 1942, § 2997-43; Laws, 1971, ch. 457, § 3, eff from and after passage (approved March 29, 1971).

§ 41-55-37. Board of directors established; qualifications and term.

When the Governor shall have received at least two (2) such resolutions from any one (1) air ambulance service district, he shall within five (5) days appoint from the district-at-large his one (1) member of the board of directors of the district. Thereafter the board of supervisors of each county in the district which has certified to its joinder in the district shall appoint one resident of its county as its member of the board of directors of the district. The appointee may by vocation be related to the hospital or medical fields or engaged in an ambulance service but all appointments shall not be limited to persons with such backgrounds. The term of each member shall coincide with that of the appointing official, so that after the initial appointment the terms shall be for a period of four (4) years.

SOURCES: Codes, 1942, § 2997-44; Laws, 1971, ch. 457, § 4, eff from and after passage (approved March 29, 1971).

§ 41-55-39. Oath of office.

Each director of an air ambulance service district shall take and subscribe to the general oath of office, required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

SOURCES: Codes, 1942, § 2997-45; Laws, 1971, ch. 457, § 5, eff from and after passage (approved March 29, 1971).

§ 41-55-41. Compensation.

If compensation is to be paid to any member of the board of directors of an air ambulance service district, it shall be paid by the district from any funds available. In no event shall such compensation exceed the sum of twenty-two dollars and fifty cents (\$22.50) per day.

SOURCES: Codes, 1942, § 2997-46; Laws, 1971, ch. 457, § 6, eff from and after passage (approved March 29, 1971).

§ 41-55-43. Officers; bond.

The board of directors of an air ambulance service district shall annually elect from its number a president and a vice president of the district, and such

other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by Sections 41-55-31 through 41-55-57 upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices.

The treasurer shall give bond in the sum of not less than fifty thousand dollars (\$50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than ten thousand dollars (\$10,000.00), with sureties qualified to do business in this state. The premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or directors will faithfully perform all duties of their offices and account for all money or other assets which shall come into his custody as treasurer or director of the district.

SOURCES: Codes, 1942, § 2997-47; Laws, 1971, ch. 457, § 7, eff from and after passage (approved March 29, 1971).

§ 41-55-45. Powers of district.

(1) Any air ambulance service district, through its board of directors, is hereby empowered:

(a) To develop, in conjunction with the head of any federal and/or state agency as may be involved, a plan for air ambulance services to persons within or without the district, including communications and other systems incident to the efficient performance of such services.

(b) To acquire and maintain any equipment necessary for the provision of such services.

(c) To set reasonable rates for services and charge for each ambulance call made.

(d) To establish rules and regulations for the use of air ambulance services both within and without the boundaries of the district, including cooperation with other air ambulance district organizations within the state and other emergency service agencies, including ground ambulances.

(e) To employ professional managerial, technical, and clerical help as may be needed in providing air ambulance services.

(f) To enter into agreements with ground ambulance facilities.

(g) To borrow, acting by and through the boards of supervisors of the individual counties comprising the district, a sum of money in anticipation of the revenue to be received from taxes levied by such counties for the support of the district; the boards of supervisors in so doing shall follow the requirements of Section 19-9-27.

(h) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by Sections 41-55-31 through 41-55-57.

(i) To make, or cause to be made, surveys and engineering investigations relating to the project, or related projects, for the information of the district, to facilitate the accomplishment of the purposes for which it is created.

(j) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to such agencies for grants to construct, maintain or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(k) To do any and all other acts or things necessary, requisite or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by Sections 41-55-31 through 41-55-57 or any act of law.

(2) In addition to the powers set forth in subsection (1), the board of directors of any air ambulance service district is further authorized and empowered to exercise all powers conferred upon the governing boards of emergency medical service districts under the provisions of the Emergency Medical Services Act of 1974 and amendments thereto.

SOURCES: Codes, 1942, § 2997-48; Laws, 1971, ch. 457, § 8; Laws, 1972, ch. 416, § 1; Laws, 1975, ch. 427, eff from and after passage (approved March 27, 1975).

Cross References — Public ambulance services, generally, see §§ 41-55-1 et seq.

Tax levy for air ambulance service, see § 41-55-47.

Determination of reasonable rates for services, see § 41-55-57.

Emergency medical services law, see §§ 41-59-1 et seq.

§ 41-55-47. Funds for support and maintenance of district.

The board of supervisors of any county of the state which becomes a part of an air ambulance service district may levy a county-wide tax for the support and maintenance of the district in an amount not to exceed one (1) mill. Any county which desires to become a part of an air ambulance service district shall levy each year a tax of not less than one-half (½) mill on all taxable property of the county for the support and maintenance of the district or such county will not be qualified to become or remain a part of the district, with the exception that should any county desire to appropriate an equivalent sum from the general fund or other available funds of the county, as provided in Section 41-55-49, the levying of the tax shall not be mandatory.

Should the board of directors of any air ambulance service district determine that a tax levy of less than one-half (½) mill on the properties comprising the district would be sufficient to maintain and operate the district for the forthcoming fiscal year, such determination shall, by resolution, be spread upon the minutes of the board of directors, which resolution shall recite the amount of the tax levy which would suffice. A certified copy of such resolution shall be delivered to the clerk of the board of supervisors of the counties affected thereby. When so done, the board of supervisors of the

counties comprising the district may for the forthcoming year levy a tax of no less than the amount of levy declared to be sufficient in such resolution without losing their qualification as members of the district.

Any tax levy made under the provisions of this section shall be used exclusively for the support and maintenance of the district and shall be made by the boards of supervisors at the time and in the manner that other county tax levies are made. The revenue provided by this section shall not, under any circumstances, be commingled with other county funds.

SOURCES: Codes, 1942, §§ 2997-49, 2997-56; Laws, 1971, ch. 457, §§ 9, 16; Laws, 1986, ch. 400, § 26; Laws, 1998, ch. 527, § 1, eff from and after passage (approved April 6, 1998).

Cross References — Homestead exemptions, see §§ 27-33-1 et seq.

Local ad valorem tax levies, see §§ 27-39-301 et seq.

Financial contribution requirement for county to join existing air ambulance service district may not exceed amount authorized by this section, see § 41-55-55.

§ 41-55-49. Payment to district of tax avails or appropriations; advances for preliminary expenses.

The board of supervisors of each county becoming a member of an air ambulance service district shall annually, on or before March 15 of each year beginning with the calendar year in which the district is created, pay or cause to be paid to the depository of the district the total avails from the tax levied on all of the taxable property within the county for the purpose of supporting the district. Such payments shall be made and continued as long as the district remains in existence, there is need therefor and the county remains a part thereof. The board of supervisors of each county shall annually provide the district the total avails from the tax levied on all taxable property within the county for such purpose; in lieu of a tax levy the board of supervisors may appropriate an equivalent sum from the general fund or other available funds of the county.

Any municipality or county which is within the territorial limits of the district may advance funds to the district to pay the preliminary expenses of the district, including reports, organization or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine.

SOURCES: Codes, 1942, § 2997-50; Laws, 1971, ch. 457, § 10, eff from and after passage (approved March 29, 1971).

Cross References — Depository of district funds, see § 41-55-53.

§ 41-55-51. Acceptance of funds from public or private sources; repayment.

The board of directors of an air ambulance service district is hereby authorized and empowered to accept grants, loans, gifts, bequests or funding

from any source, public or private, that the granting agency has authority to provide, but in no circumstances shall the acceptance of any such funding obligate any district to repay a sum in excess of the avails of the tax levies set forth in Section 41-55-47.

SOURCES: Codes, 1942, § 2997-51; Laws, 1971, ch. 457, § 11, eff from and after passage (approved March 29, 1971).

§ 41-55-53. Deposit of funds.

All funds of an air ambulance service district shall be deposited in the bank or banks located within the district qualified as county or state depositories which the board of directors of the district desire to utilize.

SOURCES: Codes, 1942, § 2997-52; Laws, 1971, ch. 457, § 12, eff from and after passage (approved March 29, 1971).

Cross References — State depositories, see §§ 27-105-1 et seq.
Depositories for funds of local governments, see §§ 27-105-301 et seq.

§ 41-55-55. Additional counties may join.

After an air ambulance service district has been formed, any other county within the same highway patrol district or any county lying immediately adjacent to the district may join the district by the same procedure as if it were initiating the district, including the appointment of an additional member to the existing board of directors.

After a district has been in existence for at least fifteen (15) years, a county may join the district only with the approval of the board of directors of the district after the board of directors first finds that the services to the new member county will not result in an undue financial burden upon the district. The board of directors of the district may establish guidelines for the admission of new member counties but may not require a financial contribution in excess of that authorized by Section 41-55-47, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 2997-53; Laws, 1971, ch. 457, § 13; Laws, 1972, ch. 416, § 2; Laws, 1993, ch. 372, § 1, eff from and after July 1, 1993.

§ 41-55-57. Rates for services.

The rates for services hereunder shall be determined by the board of directors with regard to what is reasonable in the individual air ambulance service district.

SOURCES: Codes, 1942, § 2997-54; Laws, 1971, ch. 457, § 14, eff from and after passage (approved March 29, 1971).

Cross References — Power of district board of directors to set reasonable rates for services, see § 41-55-45.

CHAPTER 57

Vital Statistics

| | |
|--------------------------|----------|
| Bureau Established | 41-57-1 |
| Births and Deaths | 41-57-3 |
| Marriages | 41-57-41 |

BUREAU ESTABLISHED

SEC.

- | | |
|----------|--|
| 41-57-1. | Bureau of vital statistics established. |
| 41-57-2. | Certain persons not entitled to access to records. |

§ 41-57-1. Bureau of vital statistics established.

A bureau of vital statistics shall be established by the State Board of Health, which shall provide an adequate system for the registration of births and deaths and preservation of vital statistics on forms prescribed by said Board of Health, and which shall provide adequate methods for enforcing the laws and orders of said Board of Health relating to health matters of the state.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1, eff from and after passage (approved March 23, 1971).

Cross References — Furnishing free copies of records concerning veterans, see § 35-3-9.

Formulation of system for gathering morbidity and vital statistics, see § 41-57-7.

JUDICIAL DECISIONS

- | | |
|--|---|
| <p>1. In general. Certified copy of death record showing deceased's age at time of death where</p> | <p>there was no birth record was inadmissible in insurance case. Clegg v. Johnson, 164 Miss. 198, 143 So. 848 (1932).</p> |
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RESEARCH REFERENCES

- Am Jur.** 39 Am. Jur. 2d, Health § 52.
CJS. 39A C.J.S., Health and Environment § 74.

§ 41-57-2. Certain persons not entitled to access to records.

Records in the possession of the Mississippi Department of Health, bureau of vital statistics, which would be of no legitimate and tangible interest to a person making a request for access to such records, shall be exempt from the provisions of the Mississippi Public Records Act of 1983; provided, however, nothing in this section shall be construed to prohibit any person with a legitimate and tangible interest in such records from having access thereto.

SOURCES: Laws, 1983, ch. 424, § 19, eff from and after July 1, 1982.

Editor's Note — "The Mississippi Public Records Act of 1983", referred to in this section, is Laws of 1983, ch. 424, §§ 1-9, which appears as §§ 25-61-1 et seq.

ATTORNEY GENERAL OPINIONS

Information provided pursuant to § 41-57-13(2) to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

BIRTHS AND DEATHS

SEC.

- 41-57-3. State registrar of vital records; safeguarding of records.
- 41-57-5. State may be divided into registration districts.
- 41-57-7. Board of health to formulate a system for gathering statistics.
- 41-57-9. Certificates of registrar to be prima facie evidence.
- 41-57-11. Payment for birth and death certificates.
- 41-57-13. Corrections and amendments to death certificates; lists of deaths to be furnished to county registrar and county election commissioners.
- 41-57-14. Social security numbers of parents required to file birth certificate.
- 41-57-15. Board of supervisors may appropriate funds for perfecting registration of records.
- 41-57-17. Repealed.
- 41-57-19. Proceedings to adjudicate true date of birth of person whose birth was not registered.
- 41-57-21. Proceedings to correct incomplete birth certificate or birth certificate having incorrect first name, middle name, place or sex.
- 41-57-23. Proceedings to correct birth certificate containing major deficiencies.
- 41-57-25. Birth certificate furnished free to armed forces volunteer.
- 41-57-27. Penalty.
- 41-57-29. Repealed.
- 41-57-31. Certificate of birth resulting in stillbirth issued upon request of parent; parents to be notified of availability of and procedure for obtaining certificate; contents of certificate.

§ 41-57-3. State registrar of vital records; safeguarding of records.

The secretary of the State Board of Health shall appoint the state registrar of vital records in accordance with classification standards of education and experience. It shall be his duty to carry into effect the rules, regulations and orders of the State Board of Health that are provided for the office of vital records registration. The said board shall provide for such clerical and other assistance as may be necessary, and may fix the compensation of persons thus employed within the amount appropriated for the health work by the legislature. The said board shall provide suitable apartments, properly equipped with fireproof vaults and filing cases, for the permanent and safe preservation of all official records made and returned to the office of vital records registration.

SOURCES: Codes, Hemingway's 1917, § 4869; 1930, § 4905; 1942, § 7061; Laws, 1912, ch. 149; Laws, 1978, ch. 326, § 1, eff from and after July 1, 1978.

Cross References — Registration of marriages, see § 41-57-48.

JUDICIAL DECISIONS

1. Determination of age.

Appellant's second petition for post-conviction relief after he pled guilty to statutory rape was properly denied because there was no merit to his calculation of the victim's age from the time of conception

rather than from the time of birth; neither statute nor case law involving the use of birth certificates to determine age contained a nine-month adjustment. *McKenzie v. State*, 946 So. 2d 392 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health § 108.
7 Am. Jur. Legal Forms, 2d, Death, §§ 85:3, 85:4 (certificate of death).
7 Am. Jur. Legal Forms 2d, Death, § 85:5 (application for death certificate).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 43 (petition or application to establish record of birth or death).
CJS. 39A C.J.S., Health and Environment § 41.

§ 41-57-5. State may be divided into registration districts.

The State Board of Health may divide the state into registration districts to provide vital statistics, defining and designating the boundaries thereof and appointing local registrars in each district.

SOURCES: Codes, Hemingway's 1917, § 4870; 1930, § 4906; 1942, § 7062; Laws, 1912, ch. 149.

Cross References — State Board of Health, see §§ 41-3-1 et seq.

Power of the State Board of Health to establish programs concerning registration of births and deaths and other vital events, see § 41-3-15.

§ 41-57-7. Board of health to formulate a system for gathering statistics.

The State Board of Health shall formulate and promulgate rules and regulations for the proper reporting and registration of morbidity and vital statistics, prescribing the method and form of making such registration.

Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1917, § 4871; 1930, § 4907; 1942, § 7063; Laws, 1912, ch. 149; Laws, 1997, ch. 588, § 17, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

JUDICIAL DECISIONS

1. In general.

It was error for the trial court to exclude rule 8 of the state board of health stating: "Provided that a certificate of birth shall not be required for a child that has not advanced to the fifth month of utero-gestation," since the rule tended to explain what

the reporting physician meant by the use of the words "about six months" as to the period of gestation of a stillborn child, he not being required to report the birth unless the child had advanced to the fifth month of gestation. *Life & Cas. Ins. Co. v. Walters*, 190 Miss. 761, 198 So. 746 (1940).

§ 41-57-9. Certificates of registrar to be prima facie evidence.

ny copy of the records of birth, sickness or death, when properly certified to by the state registrar of vital statistics, to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. A facsimile signature of the registrar shall be sufficient for certification when the certificate shall have impressed thereon the seal of the Mississippi Department of Public Health.

SOURCES: Codes, Hemingway's 1917, § 4872; 1930, § 4908; 1942, § 7064; Laws, 1912, ch. 149; Laws, 1960, ch. 352.

Editor's Note — Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Cross References — Certification of copies of public records and admissibility thereof in evidence, see § 13-1-77.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.
3. —Criminal cases.

1. In general.

The privileged communication statute and statute permitting introduction in evidence of vital statistics records must be construed together. *Life & Cas. Ins. Co. v. Walters*, 180 Miss. 384, 177 So. 47 (1937).

This section [Code 1942, § 7064] does not repeal the rule as to privileged communication of physicians. *Hunter v. Hunter*, 127 Miss. 683, 90 So. 440 (1922).

2. Particular applications.

Chancellor did not err in taking child custody from the child's biological mother, and giving custody to the nonbiological father. Under Mississippi law, the nonbiological father was the legal father because he had signed the child's birth certificate. *Thornhill v. Van Dan*, 918 So. 2d 725 (Miss. Ct. App. 2005).

A death certificate listing cause of death as bronchio-alveolar carcinoma was prima facie proof of primary cause of Workers' Compensation claimant's death. *Sonford Prods. Corp. v. Freels*, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, *Bickham v. Department of Mental Health*, 592 So. 2d 96 (Miss. 1991).

In action on life policy excluding liability if insured was pregnant at date of policy and death resulted from such pregnancy, certified copies of vital statistics records consisting of insured's attending physician's reports to the Department of Vital Statistics showing required facts with reference to death of the insured and birth of child were admissible, since, by adoption of statute permitting introduction of records of vital statistics, legislature intended to except from operation of the privileged communications statute the vital statistics records. *Life & Cas. Ins. Co. v. Walters*, 180 Miss. 384, 177 So. 47 (1937).

Since certificate hereunder showing insured's death from childbirth and containing statement of attending physician that the period of gestation of the stillborn child was about six months, was merely prima facie evidence, it was for the jury to determine whether insured was pregnant at the time the policy was issued which was less than six months before insured's death in regard to clause in the policy excluding liability for death from pregnancy existing at the time of issuance of the policy. *Life & Cas. Ins. Co. v. Walters*, 180 Miss. 384, 177 So. 47 (1937).

Where there was no birth record, certified copy of death record showing deceased's age at the time of his death was inadmissible in insurance case. *Clegg v. Johnson*, 164 Miss. 198, 143 So. 848 (1932).

Certificate of death issued by bureau of vital statistics under this section [Code 1942, § 7064], which stated that death was suicidal, is not admissible in evidence in an action on an accident policy. *Massa-*

chusetts Protective Ass'n v. Cranford, 137 Miss. 876, 102 So. 171 (1924).

3. —Criminal cases.

While the introduction of a death certificate in a criminal case is permitted under the section [Code 1942, § 7064], the use of the certificate is limited to the physical cause of death. *Flowers v. State*, 243 So. 2d 564 (Miss. 1971).

In a homicide prosecution, while it was error to admit the record of an autopsy performed on the body of the deceased by doctors at a hospital, showing death by a gunshot wound through the head, as contrary to the constitutional right of an accused to be confronted by witnesses against him, but where the testimony of other witnesses, including the doctor who examined the deceased, and where statements of the defendant herself to officers established the fact that the deceased died of a gunshot wound to the head, the error was harmless. *Flowers v. State*, 243 So. 2d 564 (Miss. 1971).

RESEARCH REFERENCES

ALR. Official death certificate as evidence of cause of death in civil or criminal action. 21 A.L.R.3d 418.

Am Jur. 22A Am. Jur. 2d, Death §§ 426, 427.

29A Am. Jur. 2d, Evidence §§ 1313 et seq.

7 Am. Jur. Legal Forms 2d, Death § 85:6.

4 Am. Jur. Proof of Facts, Death, Proof No. 2 (death certificate).

15 Am. Jur. Proof of Facts, Death Certification § 12 (discrediting death certificate).

28 Am. Jur. Proof of Facts 2d 81, Fact of Death.

2 Am. Jur. Trials 409, Locating Public Records.

9 Am. Jur. Trials 131, Actions on Health and Accident Insurance Policies.

Practice References. Young, Trial Handbook for Mississippi Lawyers §§ 19:19, 24:19.

CJS. 25A C.J.S., Death § 4.

32A C.J.S., Evidence §§ 1098 et seq., 1286et seq.

§ 41-57-11. Payment for birth and death certificates.

(1) Each local registrar shall be paid the sum of One Dollar (\$1.00) for each birth and each death certificate properly made out, and in the manner and on the form required by the State Board of Health. Such sum shall be paid by the board of supervisors of the county in which the births and deaths occurred, upon certification made monthly to the board of supervisors by the state registrar.

However, any local registrar shall receive only Fifty Cents (50¢) for each birth and each death certificate sent in to the Bureau of Vital Statistics

improperly completed or sent in at a later time than that fixed by the regulations of the State Board of Health.

(2) In addition to any fees established and collected by the State Board of Health for the issuance of original and copies of birth certificates, there shall be charged a fee of One Dollar (\$1.00) for each original and each copy of a birth certificate. This additional fee shall be deposited into the Mississippi Children's Trust Fund created by Section 93-21-305 and shall be used only as set forth in Sections 93-21-301 through 93-21-311. This additional fee shall not be added to birth certificates furnished free as provided in Sections 35-3-9 and 41-57-25.

SOURCES: Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1; Laws, 1981, ch. 425, § 1; Laws, 1989, ch. 509, § 7, eff from and after July 1, 1989.

Cross References — Furnishing free copies of records concerning veterans, see § 35-3-9.

Furnishing birth certificate of armed forces volunteer without charge, see § 41-57-25.
Creation of Mississippi Children's Trust Fund, see § 93-21-305.

§ 41-57-13. Corrections and amendments to death certificates; lists of deaths to be furnished to county registrar and county election commissioners.

(1) Death certificate errors in the recording of personal information of the deceased may be corrected by affidavit of the informant and the funeral director of the funeral home that disposed of the body. Items in the medical certification or of a medical nature may be amended upon receipt of the specified amendment form from (a) the person originally certifying the information or, if deceased or incapacitated, from the person responsible for the completion of such items, or (b) the State Medical Examiner. All other amendments to a death certificate require adjudication by a chancery court in the county of residence of the complainant or in any chancery court district in the state if the complainant is a nonresident. In all such proceedings, the State Department of Health, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. No death certificate shall be changed or amended by the State Medical Examiner or any county medical examiner or county medical examiner investigator after he has resigned or been removed from his office as the State Medical Examiner, county medical examiner or county medical examiner investigator.

(2) The local registrar of births and deaths in each county in the state shall, at least monthly, supply the county registrar, the tax assessor and the chairman of the county election commission of each county a list of deaths in the counties of individuals of voting age who have not been previously listed. Such lists shall include the following information for each deceased person: full

name (as recorded on the death certificate), social security number, date of death, sex, race, age and usual place of residence.

(3) No such payment as is provided for in Section 41-57-11 shall be made by the board of supervisors unless and until the local registrar shall certify that a list of all deaths of individuals of voting age has been filed with the county voting registrar, tax assessor and with the chairman of the county election commission of the last county of residence of the decedent in this state.

(4) In the event that the decedent is a female, who at the time of her death was between the ages of ten (10) and fifty (50) years old, the physician, medical examiner, coroner or other official who certifies the decedent's cause of death shall indicate, where appropriately designated, on the death certificate whether (a) the decedent was pregnant at the time of her death; (b) the decedent had given birth within the preceding ninety (90) days; or (c) the decedent had a miscarriage within the preceding ninety (90) days.

SOURCES: Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1; Laws, 1972, ch. 466, § 1; Laws, 1989, ch. 511, § 2; Laws, 1996, ch. 485, § 2; Laws, 1997, ch. 472, § 1; Laws, 1998, ch. 311, § 1; Laws, 2002, ch. 424, § 1, eff from and after July 1, 2002.

Cross References — Autopsy, reports, immunity from liability, and review of determination, see § 41-61-65.

ATTORNEY GENERAL OPINIONS

Information provided pursuant to subsection (2) of this section to the circuit clerk, tax assessor, and election commission of each county would not be exempt from the Public Records Act. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

§ 41-57-14. Social security numbers of parents required to file birth certificate.

(1) If the mother was married at the time of either conception or birth, or at any time between conception and birth, the name of the husband shall be entered on the certificate of birth as the father of the child. The social security number of each parent of a child born within this state shall be furnished to the local registrar of vital records at the time of filing the certificate of birth, but such information shall not appear on the portion of the certificate to be issued as a certified copy. Such information shall be sent to the Office of Vital Records Registration of the State Department of Health along with the certificate of birth and shall be retained by the office. The information shall not be disclosed to any person except as authorized by paragraph (2) of this section or as allowed by Section 41-57-2.

(2) The Office of Vital Records Registration shall make available to the Division of Child Support Enforcement of the Mississippi Department of Human Services information concerning the names and social security numbers of the parents obtained under the requirements of paragraph (1) for the

use in establishing paternity or enforcing child support obligations. Information obtained by the Division of Child Support Enforcement under this section may be used in any action or proceeding before any court, administrative tribunal, or other proceeding for the purpose of establishing paternity, establishing a child support obligation, collecting child support or locating persons owing such an obligation.

SOURCES: Laws, 1994, ch. 544, § 2, eff from and after July 1, 1994.

§ 41-57-15. Board of supervisors may appropriate funds for perfecting registration of records.

The board of supervisors of any county may appropriate additional funds, not to exceed fifty dollars (\$50.00) per month, to be used under the direction of the State Board of Health, in perfecting the registration of vital records.

SOURCES: Codes, Hemingway's 1917, § 4873; 1930, § 4909; 1942, § 7065; Laws, 1912, ch. 149; Laws, 1928, ch. 44; Laws, 1936, ch. 209; Laws, 1946, ch. 473, § 1; Laws, 1952, ch. 339; Laws, 1954, Ex. Sess. ch. 14, §§ 1, 2; Laws, 1958, ch. 357; Laws, 1966, ch. 457, § 1, eff from and after 30 days after passage (approved February 25, 1966).

§ 41-57-17. Repealed.

Repealed by Laws, 1989, ch. 511, § 8, eff from and after July 1, 1989.

[Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1]

Editor's Note — Former § 41-57-17 pertained to birth certificates of adopted children.

§ 41-57-19. Proceedings to adjudicate true date of birth of person whose birth was not registered.

Any person who was born in the State of Mississippi and whose birth has not been registered and who is unable to secure the proof now required by the registrar of births to register the same, may file a petition under oath in the chancery court of the county of the residence of the petitioner, or in any chancery court district of the state if the petitioner be a non-resident, setting out the true date of the birth of the petitioner and other facts necessary. The clerk shall issue a summons for the State Board of Health, which summons may be served on the executive secretary, the registrar of vital statistics or a duly qualified county registrar, thirty (30) days prior to the time of the hearing, to appear and contest the same. Alternatively process can be waived as provided by Section 13-3-71. The said petition may be heard by the chancellor in term time or in vacation, and the same shall not be taken as confessed, but proof shall be made of the allegation in the same. When a decree is entered adjudicating the true date of the birth of the petitioner, upon a certified copy of the decree being

furnished to the registrar of vital statistics showing the true date of the birth of the petitioner, the same shall be registered upon the proper records of the State Board of Health.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904, 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1, eff from and after passage (approved March 23, 1971).

Editor's Note — Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Section 13-3-71, referred to in this section, was repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 45, 46 (affidavits — in support of petition or application to establish fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 47, 48 (notice and hearing — on application for order establishing fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 49, 50 (order — establishing fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 51 (order — directing state official to record birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Form 52 (notice — appeal from failure or refusal of state official to register fact of birth).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 41-43 (application-to establish record of birth or death).

§ 41-57-21. Proceedings to correct incomplete birth certificate or birth certificate having incorrect first name, middle name, place or sex.

Where there has been a bona fide effort to register a birth and the certificate thereof on file with the office of vital records does not divulge all of the information required by said certificate, or such certificate contains an incorrect first name, middle name, or sex, then the state registrar of vital records may, in his discretion, correct such certificate upon affidavit of at least two (2) reputable persons having personal knowledge of the facts in relation thereto. All other alterations shall be made as provided in Section 41-57-23. Anyone giving false information in such affidavit shall be subject to the penalties of perjury.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 1; Laws, 1983, ch. 522, § 33, eff from and after July 1, 1983.

Cross References — Crime of perjury, see § 97-9-59.

JUDICIAL DECISIONS

1. In general.

The legislature intended to grant the Health Department the discretion to correct any combination of errors among the items listed in the statute and, therefore,

the Health Department was within its discretion to correct both the name and the gender on a particular birth certificate. *Dunn v. Mississippi State Dep't of Health*, 708 So. 2d 67 (Miss. 1998).

§ 41-57-23. Proceedings to correct birth certificate containing major deficiencies.

(1) Any petition, bill of complaint or other proceeding filed in the chancery court to: (a) change the date of birth by two (2) or more days, (b) change the surname of a child, (c) change the surname of either or both parents, (d) change the birthplace of the child because of an error or omission of such information as originally recorded or (e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifically authorized elsewhere by statute, shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner. In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the certificate, it shall comply with all of the provisions of such decree.

(2) If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father.

(3)(a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) Sixty (60) days; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the sixty-day period specified in subsection

(3) (a) (i) of this section, a signed voluntary acknowledgment of paternity

may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 2; Laws, 1983, ch. 522, § 34; Laws, 1989, ch. 511, § 3; Laws, 1994, ch. 544, § 3; Laws, 1994, ch. 614, § 1; Laws, 1999, ch. 512, § 9, eff from and after July 1, 1999.

JUDICIAL DECISIONS

1. In general.
2. Acknowledgement of paternity.
3. Effect of signing birth certificate.

1. In general.

In a proceeding by a former husband to have his name deleted from the birth certificate of an infant born to his former wife following their divorce, the chancery court erred in failing to grant the petition where the evidence established that the infant had been born in May, 1978, but the parties had not lived together since October, 1976, and where there was testimony that the former wife had informed her former husband and his mother that he was not the father of the child and that the former wife had listed the name of another man as the father of the child in an application to the welfare department. *McLeod v. State Bd. of Health*, 393 So. 2d 479 (Miss. 1981).

2. Acknowledgement of paternity.

Refusal to award attorney's fees to the

mother in a child custody action was proper pursuant to the Mississippi Litigation Accountability Act, Miss. Code Ann. § 11-55-1 et seq., because the father's claim for custody was not frivolous. He was and remained the legal father of the children because the parties had voluntarily signed an acknowledgment of paternity knowing that the father was not the biological father of the children, Miss. Code Ann. § 41-57-23(2) and (3). *Adcock v. Van Norman*, 918 So. 2d 747 (Miss. Ct. App. 2005).

3. Effect of signing birth certificate.

Chancellor did not err in taking child custody from the child's biological mother, and giving custody to the nonbiological father. Under Mississippi law, the nonbiological father was the legal father because he had signed the child's birth certificate. *Thornhill v. Van Dan*, 918 So. 2d 725 (Miss. Ct. App. 2005).

ATTORNEY GENERAL OPINIONS

An acknowledgment of paternity in the manner prescribed prior to July 1, 1994, was sufficient to impose liability upon the natural father. *Thaylor*, January 9, 1998, A.G. Op. #97-0813.

Where the chancery court is contemplating issuing an order directing the Department of Health to change a birth certificate in fact situations covered by Section 41-57-23, the chancery court

should require that the Department of Health be made a party to the lawsuit; nevertheless, in cases where a chancery court has ordered the Department of Health to make a correction to a birth certificate without having first made the department a party, the department should proceed based on that court order. *Thompson, Jr.*, Oct. 26, 2000, A.G. Op. #2000-0507.

§ 41-57-25. Birth certificate furnished free to armed forces volunteer.

Any person who is volunteering for one of the armed forces of the United States is entitled to a certified copy of his birth certificate from the State Board of Health immediately upon application and at no expense to the applicant or his recruiting officer.

SOURCES: Codes, 1942, § 7064.5; Laws, 1971, ch. 327, § 1, eff from and after passage (approved March 1, 1971).

Cross References — Additional fee for each original and each copy of a birth certificate to be deposited into the Mississippi Children's Trust Fund, see § 41-57-11.

§ 41-57-27. Penalty.

Any person or persons who shall violate any rule, regulation or order of the State Board of Health relative to recording, reporting or filing information for the Bureau of Vital Statistics, or who shall willfully neglect or refuse to perform any duties imposed upon them by said orders, or who shall furnish false information for the purpose of making incorrect records for said bureau, or who shall willfully furnish false information to said bureau for the purpose of establishing a false identity, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00) or be imprisoned in the county jail not exceeding six (6) months, or suffer both such fine and imprisonment, in the discretion of the court.

SOURCES: Codes, Hemingway's 1917, § 4874; 1930, § 4910; 1942, § 7066; Laws, 1912, ch. 149; Laws, 1983, ch. 522, § 35; Laws, 1989, ch. 511, § 4, eff from and after July 1, 1989.

Cross References — Crime of perjury, see § 97-9-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-57-29. Repealed.

Repealed by Laws 1992, ch. 391, § 2, eff from and after July 1, 1993.
[Laws, 1992, ch. 391, § 1]

Editor's Note — Former § 41-57-29 required the social security numbers of parents or alleged parents to be filed with certificate of birth, authorized their use in paternity and support proceedings, and directed the department to take bids for genetic testing. For present similar provisions, see § 41-57-14.

§ 41-57-31. Certificate of birth resulting in stillbirth issued upon request of parent; parents to be notified of availability of and procedure for obtaining certificate; contents of certificate.

(1) As used in this section, the following terms shall be defined as provided in this section, unless the context otherwise requires:

(a) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record and memorialize the birth of a stillborn child.

(b) "Stillbirth" or "stillborn" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than twenty (20) completed weeks.

(2) For any stillborn child in this state, the Bureau of Vital Statistics shall issue a certificate of birth resulting in stillbirth upon the request of a parent named on the death certificate, within sixty (60) days of the date of the request. A parent may request the Bureau of Vital Statistics to issue a certificate of birth resulting in stillbirth without regard to whether the death occurred on, before, or after July 1, 2007, and without regard to the date on which the death certificate was issued.

(3) The person who is required to file a death certificate under this chapter shall advise the parent or parents of a stillborn child:

(a) That a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(b) That a parent may obtain a certificate of birth resulting in stillbirth by contacting the Bureau of Vital Statistics to request the certificate and paying the required fee; and

(c) How a parent may contact the Bureau of Vital Statistics to request a certificate of birth resulting in stillbirth.

(4) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. The name of the stillborn child provided on or later added by amendment to the certificate shall be the same name as placed on the original or amended death certificate. If the requesting parent does not wish to provide a name, the Bureau of Vital Statistics shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent.

(5) Not later than September 1, 2007, the State Department of Health shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate. In addition to any other information required to be on the certificate, the certificate shall include:

(a) The date of the stillbirth;

(b) The county in which the stillbirth occurred;

(c) The state file number of the corresponding death certificate; and

(d) The following statement: "This certificate is not proof of live birth."

(6) Upon issuance of a certificate of birth resulting in stillbirth to a parent, the Bureau of Vital Statistics shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the death certificate.

(7) The Bureau of Vital Statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(8) The State Board of Health may adopt any rules or regulations necessary to administer this section.

SOURCES: Laws, 2007, ch. 514, § 20, eff from and after June 30, 2007.

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

MARRIAGES

SEC.

- 41-57-41. Repealed.
- 41-57-43. State registrar of vital statistics; safeguarding of records.
- 41-57-45. Repealed.
- 41-57-47. Certificates of registrar to be prima facie evidence.
- 41-57-48. Statistical record of marriage; completion; filing; recording fee.
- 41-57-49 through 41-57-55. Repealed.
- 41-57-57. Circuit clerks to compile data on marriages.
- 41-57-59. Penalty.

§ 41-57-41. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979.
[Laws, 1926, ch. 164; Laws, 1928, ch. 132]

Editor's Note — Former § 41-57-41 required all marriages occurring in Mississippi to be registered with the state registrar of vital statistics.

§ 41-57-43. State registrar of vital statistics; safeguarding of records.

It shall be the duty of the state registrar of vital statistics, in addition to the duties now required of him by law, to carry into effect the provisions of law relating to registration of marriages and the rules, regulations and orders of the State Board of Health which may be promulgated pursuant to Section 41-57-45. The said State Board of Health shall provide for such clerical and other assistance as may be necessary, and may fix the compensation of persons thus employed. The said board shall provide suitable apartments properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned to said bureau.

SOURCES: Codes, 1930, § 4934; 1942, § 7090; Laws, 1926, ch. 164; Laws, 1928, ch. 132.

Editor's Note — Section 41-57-45 referred to in this section was repealed by Laws of 1978, ch. 406, § 2, effective from and after January 1, 1979.

Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

§ 41-57-45. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979.
[Laws, 1926, ch. 164; Laws, 1928, ch. 132]

Editor's Note — Former § 41-57-45 required the State Board of Health to formulate a plan for reporting and registering marriages.

§ 41-57-47. Certificates of registrar to be prima facie evidence.

Any copy of the records of marriages, when properly certified by the State Registrar of Vital Statistics to be a true copy thereof, shall be taken and received as prima facie evidence of the facts therein stated in all courts of this state. For any such certified copy, the applicant shall pay to the Bureau of Vital Statistics such fee for transactions as prescribed by the State Board of Health, which fees shall be paid into the State Treasury within sixty (60) days from the receipt thereof.

SOURCES: Codes, 1930, § 4939; 1942, § 7094; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 2001, ch. 418, § 1, eff from and after July 1, 2001.

Editor's Note — Laws of 1978, ch. 326, § 1, effective July 1, 1978, changed the title of the state registrar of vital statistics, referred to in this section, to be the state registrar of vital records. See § 41-57-3.

Cross References — Furnishing free copies of records concerning veterans, see § 35-3-9.

Admissibility of birth and death certificates, see § 41-57-9.

RESEARCH REFERENCES

Am Jur. 29A Am. Jur. 2d, Evidence § 1313.

52 Am. Jur. 2d, Marriage § 106.

7 Am. Jur. Proof of Facts, Marriage, Proof No. 1 (valid ceremonial marriage).

2 Am. Jur. Trials 409, Locating Public Records.

Practice References. Young, Trial Handbook for Mississippi Lawyers §§ 19:19, 24:19.

CJS. 32A C.J.S., Evidence §§ 1098 et seq.

55 C.J.S., Marriage § 44.

§ 41-57-48. Statistical record of marriage; completion; filing; recording fee.

(1) For each marriage performed in this state, a record entitled "Statistical Record of Marriage" shall be filed with the office of vital records registration of the State Board of Health by the circuit clerk who issued the marriage license and shall be registered if it has been completed and filed in accordance with this section.

(2) The circuit clerk who issues the marriage license shall complete the statistical record (except for the section relating to the ceremony) on a form prescribed and furnished by the State Board of Health and shall sign it. The record shall be prepared on the basis of information obtained from the parties

to be married, and both the bride and the groom shall sign the record certifying that the information about themselves is correct.

(3) The person who performs the marriage ceremony shall complete and sign the section relating to the ceremony and shall return the record to the circuit clerk who issued the license within five (5) days after the ceremony.

(4) The circuit clerk, on or before the tenth day of each calendar month, shall forward to the State Board of Health all completed records returned to him during the preceding month.

(5) The circuit clerk shall receive a recording fee of one dollar (\$1.00) for each marriage record prepared and forwarded by him to the State Board of Health. This fee shall be collected from the applicants for the license together with, and in addition to, the fee for the license and shall be deposited in the county treasury. The recording fees shall be paid to the circuit clerk out of the county treasury once each six (6) months on order of the board of supervisors, upon certification by the office of vital records registration of the number of marriage records filed.

SOURCES: Laws, 1978, ch. 406, § 1, eff from and after January 1, 1979.

ATTORNEY GENERAL OPINIONS

A statistical record of marriage should be prepared for each license issued by the circuit clerks of the state of Mississippi, regardless of whether the ceremony of marriage is performed in the state of Mis-

issippi, and the statistical record should be filed with the Mississippi State Department of Health. Garner, Apr. 5, 2002, A.G. Op. #02-0141.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Marriage § 35.
2 Am. Jur. Trials 409, Locating Public Records.

CJS. 55 C.J.S., Marriage § 33.

§§ 41-57-49 through 41-57-55. Repealed.

Repealed by Laws, 1978, ch. 406, § 2, eff from and after January 1, 1979.

§§ 41-57-49 through 41-57-53 [Laws, 1926, ch. 164; Laws, 1938, ch. 293; Laws, 1956, ch. 302]

§ 41-57-55. [Laws, 1926, ch. 164]

Editor's Note — Former § 41-57-49 authorized the state board of health to prepare and distribute a revised form containing a statistical record of a marriage and provided for the information to be recorded thereon.

Former § 41-57-51 related to the completion of the statistical record of marriage form.

Former § 41-57-53 dealt with the duty of the circuit court clerk with respect to forwarding monthly to the state board of health completed statistical record of marriage forms and lists of marriage licenses issued.

Former § 41-57-55 fixed the fee of the circuit court clerk for forwarding to the State Board of Health completed statistical record of marriage forms and lists of marriage licenses issued, and provided for the payment thereof.

§ 41-57-57. Circuit clerks to compile data on marriages.

In order to secure records of marriages and births in the several counties in this state from the earliest records down to the present time, the State Board of Health is hereby authorized and empowered to make contract with the circuit clerks or others of this state to compile for the bureau of vital statistics complete lists of marriages in the various counties from the earliest records down to the present time. In order to complete these records by securing records of said marriages in all said counties, the State Board of Health is hereby authorized and empowered to deposit all moneys received as fees for certified copies of births, deaths and marriages in the state treasury in a separate account to be used for the completion of the vital statistics on marriages in the various counties, and for clerical expenses and other expenses necessary for completion and issuance of birth records. Said fund shall be paid out for said purposes only on voucher issued for these purposes by the State Board of Health. When said statistics of past marriages in the several counties shall have been completed and paid for, then all of said funds that may remain on hand and all other such funds collected for certified copies of birth, death and marriage records thereafter may be used for the completion of birth records.

SOURCES: Codes, 1930, § 4940; 1942, § 7095; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 1942, ch. 317.

§ 41-57-59. Penalty.

Any person or persons who shall violate any of the provisions of Sections 41-57-41 through 41-57-57, or any rule, regulation or order of the state board of health relative to the making of said reports, as to reporting, recording or filing the information for the bureau of vital statistics on marriages, or who shall fail, neglect or refuse to perform any of the duties imposed by said order, rules or regulations, or shall furnish false information for the purpose of making incorrect records for said bureau, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) or be imprisoned in the county jail not exceeding six (6) months, or shall suffer both such fine and imprisonment, at the discretion of said court.

SOURCES: Codes, 1930, § 4941; 1942, § 7096; Laws, 1926, ch. 164; Laws, 1928, ch. 132; Laws, 1983, ch. 522, § 36, eff from and after July 1, 1983.

Editor's Note — Section 41-57-41 referred to in this section was repealed by Laws of 1978, ch. 406, § 2, effective from and after January 1, 1979.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 58

Medical Radiation Technology

SEC.

- 41-58-1. Definitions [Repealed effective July 1, 2010].
- 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2010].
- 41-58-5. Continuing education requirements; completion; fees [Repealed effective July 1, 2010].
- 41-58-7. State Board of Medical Licensure authorized to license and regulate practice of radiologist assistants; radiologists authorized to use services of radiologist assistants to practice radiology assistance under their supervision; board shall promulgate rules and regulations including qualifications for licensure, scope of practice, discipline, and fees; requirements for licensure; radiologist assistants prohibited from interpreting images, making diagnoses, or prescribing medications or therapies.

§ 41-58-1. Definitions [Repealed effective July 1, 2010].

As used in this chapter:

- (a) "Department" means the Mississippi State Department of Health.
- (b) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, chiropractic, osteopathy or podiatry, or a licensed nurse practitioner.
- (c) "Ionizing radiation" means x-rays and gamma rays, alpha and beta particles, high speed electrons, neutrons and other nuclear particles.
- (d) "X-radiation" means penetrating electromagnetic radiation with wavelengths shorter than ten (10) nanometers produced by bombarding a metallic target with fast electrons in a vacuum.
- (e) "Supervision" means responsibility for, and control of, quality radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.
- (f) "Medical radiation technology" means the science and art of applying ionizing radiation to human beings for diagnostic and/or therapeutic purposes. The three (3) specialized disciplines of medical radiation technology are diagnostic radiologic technology, nuclear medicine technology and radiation therapy.
- (g) "Radiologic technologist" means a person other than a licensed practitioner who has passed a national certification examination such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation or ionizing radiation to any part of the human body for diagnostic purposes.
- (h) "Nuclear medicine technologist" means a person other than a licensed practitioner who has passed a national certification examination

such as the American Registry of Radiologic Technologists examination or the Nuclear Medicine Technology Certification Board examination or its equivalent, who performs in vivo imaging and measurement procedures and in vitro nonimaging laboratory studies, prepares radiopharmaceuticals, and administers diagnostic/therapeutic doses of radiopharmaceuticals to human beings while under the supervision of a licensed practitioner who is licensed to possess and use radioactive material.

(i) "Radiation therapist" means a person other than a licensed practitioner who has passed a national certification examination such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation and the ionizing radiation emitted from particle accelerators, cobalt sixty (60) units and sealed sources of radioactive material to human beings for therapeutic purposes while under the supervision of a licensed radiation oncologist or a board certified radiologist who is licensed to possess and use radioactive material.

(j) "Council" means the Medical Radiation Advisory Council created pursuant to Section 41-58-3.

This section shall stand repealed on July 1, 2010.

SOURCES: Laws, 1995, ch. 388, § 1; Laws, 1996, ch. 546, § 1; Laws, 2000, ch. 333, § 1; Laws, 2006, ch. 324, § 1, eff from and after June 30, 2006.

§ 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2010].

(1) The department shall have full authority to adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter, and may amend or repeal the same as may be necessary for such purposes.

(2) There shall be established a Medical Radiation Advisory Council to be appointed as provided in this section. The council shall consist of ten (10) members as follows:

(a) One (1) radiologist who is an active practitioner and member of the Mississippi Radiological Society;

(b) One (1) licensed family physician;

(c) One (1) licensed practitioner;

(d) Two (2) registered radiologic technologists;

(e) One (1) nuclear medicine technologist;

(f) One (1) radiation therapist;

(g) One (1) limited radiologic technician;

(h) One (1) radiation physicist;

(i) One (1) hospital administrator; and

(j) The State Health Officer, or his designee, who shall serve as ex officio chairman with no voting authority.

(3) The department shall, following the recommendations from the appropriate professional state societies and organizations, including the Mississippi Radiological Society, the Mississippi Society of Radiologic Technologists, and the Mississippi State Nuclear Medicine Society, and other nominations that may be received from whatever source, appoint the members of the council as soon as possible after April 13, 1996. Any person serving on the council who is a practitioner of a profession or occupation required to be licensed, credentialed or certified in the state shall be a holder of an appropriate license, credential or certificate issued by the state. All members of the council shall be residents of the State of Mississippi. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the department in the development of regulations and standards to effectuate the provisions of this chapter.

(4) A radiologic technologist, nuclear medicine technologist or radiation therapist shall not apply ionizing or x-radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of medical radiation technology unless the person possesses a valid registration issued under the provisions of this chapter.

(5) The department may issue a temporary registration to practice a specialty of medical radiation technology to any applicant who has completed an approved program, who has complied with the provisions of this chapter, and is awaiting examination for that specialty. This registration shall convey the same rights as the registration for which the applicant is awaiting examination and shall be valid for one (1) six-month period.

(6) The department may charge a registration fee of not more than Twenty-five Dollars (\$25.00) annually to each person to whom it issues a registration under the provisions of this chapter.

(7) Registration is not required for:

(a) A student enrolled in and participating in an approved course of study for diagnostic radiologic technology, nuclear medicine technology or radiation therapy, who as a part of his clinical course of study applies ionizing radiation to a human being while under the supervision of a licensed practitioner, registered radiologic technologist, registered nuclear medicine technologist or registered radiation therapist;

(b) Laboratory personnel who use radiopharmaceuticals for in vitro studies;

(c) A dental hygienist or a dental assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Dental Examiners and applies ionizing radiation under the specific direction of a licensed dentist;

(d) A chiropractic assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Chiropractic Examiners and applies ionizing radiation under the specific direction of a licensed chiropractor;

(e) An individual who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Medical Licensure and applies ionizing radiation in a physician's office or a radiology clinic under the specific direction of a licensed physician; and

(f) An individual who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who is employed by a licensed hospital in Mississippi and applies ionizing radiation under the specific direction of a licensed practitioner.

(8) Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of a licensed practitioner who is duly licensed or registered by the appropriate agency of the State of Mississippi, provided that the agency specifically recognizes that the procedures covered by this chapter are within the scope of practice of the licensee or registrant.

(9)(a) If any radiologic technologist, nuclear medicine technologist or radiation therapist violates any provision of this chapter, the department shall suspend or revoke the registration and practice privileges of the person, in accordance with statutory procedures and rules and regulations of the department.

(b) If any person violates any provision of this chapter, the department shall issue a written warning to the licensed practitioner or medical institution that employs the person; and if that person violates any provision of this chapter again within three (3) years after the first violation, the department may suspend or revoke the permit or registration for the x-radiation and ionizing radiation equipment of the licensed practitioner or medical institution that employs the person, in accordance with statutory procedures and rules and regulations of the department regarding suspension and revocation of such permits or registrations.

(10) This section shall stand repealed on July 1, 2010.

SOURCES: Laws, 1995, ch. 388, § 2; Laws, 1996, ch. 546, § 2; Laws, 2000, ch. 333, § 2; Laws, 2006, ch. 324, § 2, eff from and after June 30, 2006.

Editor's Note — Pursuant to Laws, 1996, ch. 546, § 4, subsections (2) and (3) of this section became effective from and after passage (approved April 13, 1996); the remainder of the act became effective from and after July 1, 1996.

Cross References — Authority of State Board of Chiropractic Examiners to certify chiropractic assistants exempt from registration under this section, see § 73-6-5.

§ 41-58-5. Continuing education requirements; completion; fees [Repealed effective July 1, 2010].

(1) Each registered radiologic technologist, registered nuclear medicine technologist and registered radiation therapist shall submit evidence to the department of completing twenty-four (24) hours of continuing education in a two-year period as described in the rules and regulations of the department.

(2) From and after July 1, 1997, each individual who is exempt from registration under paragraph (d), (e) or (f) of Section 41-58-3(7) shall complete

twelve (12) hours of continuing education in a two-year period as described in the rules and regulations of the department. Six (6) of the continuing education hours must be in radiologic protection.

(3)(a) An individual who is exempt from registration under paragraph (d), (e) or (f) of Section 41-58-3(7) and who is engaged in applying ionizing radiation in the State of Mississippi before July 1, 1996, shall complete twelve (12) hours of continuing education in radiologic technology and patient safety not later than July 1, 1997.

(b) An individual who is exempt from registration under paragraph (d), (e) or (f) of Section 41-58-3(7) and who is first employed to apply ionizing radiation in the State of Mississippi after June 30, 1996, shall complete twelve (12) hours of continuing education in radiologic technology and patient safety not later than twelve (12) months after the date of his employment to apply ionizing radiation.

(c) Not later than July 1, 1996, the department shall approve training sessions that will provide the continuing education required under this subsection (3). During the period from July 1, 1996, through June 30, 1997, the department shall approve not less than four (4) training sessions in each of the junior/community college districts in the state, with at least one (1) training session being held during each quarter of the year.

(4)(a) Beginning on August 1, 1997, the Board of Dental Examiners shall annually provide the department with a list certifying those dental hygienists and dental assistants who are exempt from registration under paragraph (c) of Section 41-58-3(7).

(b) Beginning on August 1, 1997, the Board of Chiropractic Examiners shall provide the department with a list certifying those chiropractic assistants who are exempt from registration under paragraph (d) of Section 41-58-3(7) who have completed the continuing education requirements of subsections (2) and (3) of this section.

(c) Beginning on August 1, 1997, the Board of Medical Licensure shall provide the department with a list certifying those individuals who are exempt from registration under paragraph (e) of Section 41-58-3(7) who have completed the continuing education requirements of subsections (2) and (3) of this section.

(d) Beginning on August 1, 1997, each licensed hospital in Mississippi that employs any individual who is exempt from registration under paragraph (f) of Section 41-58-3(7) shall provide the department with a list certifying those individuals who have completed the continuing education requirements of subsections (2) and (3) of this section.

(e) Not less frequently than once every six (6) months after August 1, 1997, the Board of Chiropractic Examiners, the Board of Medical Licensure and each licensed hospital subject to paragraph (d) of this subsection (4) shall provide the department with updated lists certifying those individuals who have completed the continuing education requirements of subsections (2) and (3) of this section.

(f) Beginning on August 1, 1997, the Board of Chiropractic Examiners and the Board of Medical Licensure each may charge a fee of not more than

Twenty-five Dollars (\$25.00) biennially to each individual whom the board certifies as having completed the continuing education requirements of subsections (2) and (3) of this section.

(5) This section shall stand repealed on July 1, 2010.

SOURCES: Laws, 1996, ch. 546, § 3; Laws, 1997, ch. 541, § 36; Laws, 2000, ch. 333, § 3; Laws, 2006, ch. 324, § 3, eff from and after June 30, 2006.

Cross References — Authority of State Board of Chiropractic Examiners to establish continuing education requirements for chiropractic assistants, see § 73-6-5.

§ 41-58-7. State Board of Medical Licensure authorized to license and regulate practice of radiologist assistants; radiologists authorized to use services of radiologist assistants to practice radiology assistance under their supervision; board shall promulgate rules and regulations including qualifications for licensure, scope of practice, discipline, and fees; requirements for licensure; radiologist assistants prohibited from interpreting images, making diagnoses, or prescribing medications or therapies.

(1) The State Board of Medical Licensure shall license and regulate the practice of radiologist assistants in accordance with the provisions of this section.

(2) A radiologist may use the services of a radiologist assistant to practice radiology assistance under the supervision of the radiologist, provided that the radiologist assistant is duly qualified and licensed as provided in this section.

(3) The board shall promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and enforce the provisions of law regulating the practice of radiologist assistants. Those rules and regulations shall include, but are not limited to: qualifications for licensure for radiologist assistants; scope of practice of radiologist assistants; supervision of radiologist assistants; identification of radiologist assistants; grounds for disciplinary actions and discipline of radiologist assistants; and setting and charging reasonable fees for licensure and license renewals for radiologist assistants.

(4) Those rules and regulations adopted by the board pertaining to the scope of practice and the educational qualifications necessary to practice as a radiologist assistant shall be consistent with guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists.

(5) Applicants for licensure as a radiologist assistant must be: (a) credentialed to provide radiology services under the supervision of a radiologist; (b) a radiologic technologist registered under Sections 41-58-1 through 41-58-5; and (c) certified and registered with the American Registry of Radiologic Technologists.

(6) A radiologist assistant may not interpret images, make diagnoses or prescribe medications or therapies.

SOURCES: Laws, 2005, ch. 317, § 1; Laws, 2006, ch. 342, § 1, eff from and after passage (approved Mar. 13, 2006.)

CHAPTER 59

Emergency Medical Services

SEC.

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§ 41-59-1. Title.

This chapter shall be cited as the “Emergency Medical Services Act of 1974.”

SOURCES: Laws, 1974, ch. 507, § 1, eff from and after passage (approved April 3, 1974).

Cross References — Public ambulance service law, see §§ 41-55-1 et seq.
Advanced life support personnel and services, see §§ 41-60-11, 41-60-13.

§ 41-59-3. Definitions [Repealed effective July 1, 2011].

As used in this chapter, unless the context otherwise requires, the term:

(a) “Ambulance” means any privately or publicly owned land or air vehicle that is especially designed, constructed, modified or equipped to be used, maintained and operated upon the streets, highways or airways of this state to assist persons who are sick, injured, wounded, or otherwise incapacitated or helpless;

(b) “Permit” means an authorization issued for an ambulance vehicle and/or a special use EMS vehicle as meeting the standards adopted under this chapter;

(c) “License” means an authorization to any person, firm, corporation, or governmental division or agency to provide ambulance services in the State of Mississippi;

(d) “Emergency medical technician” means an individual who possesses a valid emergency medical technician’s certificate issued under the provisions of this chapter;

(e) “Certificate” means official acknowledgment that an individual has successfully completed (i) the recommended basic emergency medical technician training course referred to in this chapter which entitles that individual to perform the functions and duties of an emergency medical technician, or (ii) the recommended medical first responder training course referred to in this chapter which entitles that individual to perform the functions and duties of a medical first responder;

(f) “Board” means the State Board of Health;

(g) “Department” means the State Department of Health, Division of Emergency Medical Services;

(h) “Executive officer” means the Executive Officer of the State Board of Health, or his designated representative;

(i) “First responder” means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons;

(j) "Medical first responder" means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons who (i) is trained to assist other EMS personnel by successfully completing, and remaining current in refresher training in accordance with, an approved "First Responder: National Standard Curriculum" training program, as developed and promulgated by the United States Department of Transportation, (ii) is nationally registered as a first responder by the National Registry of Emergency Medical Technicians; and (iii) is certified as a medical first responder by the State Department of Health, Division of Emergency Medical Services;

(k) "Invalid vehicle" means any privately or publicly owned land or air vehicle that is maintained, operated and used only to transport persons routinely who are convalescent or otherwise nonambulatory and do not require the service of an emergency medical technician while in transit;

(l) "Special use EMS vehicle" means any privately or publicly owned land, water or air emergency vehicle used to support the provision of emergency medical services. These vehicles shall not be used routinely to transport patients;

(m) "Trauma care system" or "trauma system" means a formally organized arrangement of health-care resources that has been designated by the department by which major trauma victims are triaged, transported to and treated at trauma care facilities;

(n) "Trauma care facility" or "trauma center" means a hospital located in the State of Mississippi or a Level I trauma care facility or center located in a state contiguous to the State of Mississippi that has been designated by the department to perform specified trauma care services within a trauma care system pursuant to standards adopted by the department;

(o) "Trauma registry" means a collection of data on patients who receive hospital care for certain types of injuries. Such data are primarily designed to ensure quality trauma care and outcomes in individual institutions and trauma systems, but have the secondary purpose of providing useful data for the surveillance of injury morbidity and mortality;

(p) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, psychiatric disturbances and/or symptoms of substance abuse, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(q) "Emergency medical call" means a situation that is presumptively classified at time of dispatch to have a high index of probability that an emergency medical condition or other situation exists that requires medical intervention as soon as possible to reduce the seriousness of the situation, or when the exact circumstances are unknown, but the nature of the request is suggestive of a true emergency where a patient may be at risk;

(r) “Emergency response” means responding immediately at the basic life support or advanced life support level of service to an emergency medical call. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call;

(s) “Emergency mode” means an ambulance or special use EMS vehicle operating with emergency lights and warning siren (or warning siren and air horn) while engaged in an emergency medical call.

SOURCES: Laws, 1974, ch. 507, § 2; Laws, 1991, ch. 482, § 1; Laws, 1998, ch. 429, § 1; Laws, 2000, ch. 594, § 1; Laws, 2002, ch. 623, § 1; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 1; Laws, 2004, ch. 425, § 1; Laws, 2004, ch. 581, § 1; Laws, 2008, ch. 549, § 1, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 1 of ch. 425 Laws of 2004, effective from and after July 1, 2004 (approved April 27, 2004), amended this section. Section 1 of ch. 581, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 581, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor’s Note — Laws of 2002, ch. 623, § 5, as amended by Laws, 2002, 1st Ex Sess, ch. 3, § 5, provides as follows:

“SECTION 5. This act shall take effect and be in force from and after July 1, 2004.”

Laws of 2008, ch. 549, § 9 provides:

“SECTION 9. This act shall stand repealed on July 1, 2011.”

Amendment Notes — The 2008 amendment deleted the former last sentence of (n), which read: “Participation in this designation by each hospital is voluntary.”

ATTORNEY GENERAL OPINIONS

Medical information contained in “run reports” from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential other information in reports is public. Lawrence Oct. 6, 1993, A.G. Op. #93-0592.

It is within the discretion of the Depart-

ment of Health to determine the type of organizational structure that will best meet the intent of the legislature to “reduce death and disability resulting from traumatic injury” through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-5. Establishment and administration of program [Repealed effective July 1, 2011].

(1) The State Board of Health shall establish and maintain a program for the improvement and regulation of emergency medical services (hereinafter EMS) in the State of Mississippi. The responsibility for implementation and conduct of this program shall be vested in the State Health Officer of the State

Board of Health along with such other officers and boards as may be specified by law or regulation.

(2) The board shall provide for the regulation and licensing of public and private ambulance service, inspection and issuance of permits for ambulance vehicles, training and certification of EMS personnel, including drivers and attendants, the development and maintenance of a statewide EMS records program, development and adoption of EMS regulations, the coordination of an EMS communications system, and other related EMS activities.

(3) The board is authorized to promulgate and enforce such rules, regulations and minimum standards as needed to carry out the provisions of this chapter.

(4) The board is authorized to receive any funds appropriated to the board from the Emergency Medical Services Operating Fund created in Section 41-59-61 and is further authorized, with the Emergency Medical Services Advisory Council acting in an advisory capacity, to administer the disbursement of such funds to the counties, municipalities and organized emergency medical service districts and the utilization of such funds by the same, as provided in Section 41-59-61.

(5) The department acting as the lead agency, in consultation with and having solicited advice from the EMS Advisory Council, shall develop a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. It is the intent of the Legislature that the purpose of this system is to reduce death and disability resulting from traumatic injury, and in order to accomplish this goal it is necessary to assign additional responsibilities to the department. The department is assigned the responsibility for creating, implementing and managing the statewide trauma care system. The department shall be designated as the lead agency for trauma care systems development. The department shall develop and administer trauma regulations that include, but are not limited to, the Mississippi Trauma Care System Plan, trauma system standards, trauma center designations, field triage, interfacility trauma transfer, EMS aero medical transportation, trauma data collection, trauma care system evaluation and management of state trauma systems funding. The department shall promulgate regulations specifying the methods and procedures by which Mississippi-licensed acute care facilities shall participate in the statewide trauma system. Those regulations shall include mechanisms for determining the appropriate level of participation for each facility or class of facilities. The department shall also adopt a schedule of fees to be assessed for facilities that choose not to participate in the statewide trauma care system, or which participate at a level lower than the level at which they are capable of participating. The department shall promulgate rules and regulations necessary to effectuate this provision by September 1, 2008, with an implementation date of September 1, 2008. The department shall take the necessary steps to develop, adopt and implement the Mississippi Trauma Care System Plan and all associated trauma care system regulations necessary to implement the Mississippi trauma care system. The department shall cause the implementation of both professional

and lay trauma education programs. These trauma educational programs shall include both clinical trauma education and injury prevention. As it is recognized that rehabilitation services are essential for traumatized individuals to be returned to active, productive lives, the department shall coordinate the development of the inclusive trauma system with the Mississippi Department of Rehabilitation Services and all other appropriate rehabilitation systems.

(6) The State Board of Health is authorized to receive any funds appropriated to the board from the Mississippi Trauma Care System Fund created in Section 41-59-75. It is further authorized, with the Emergency Medical Services Advisory Council and the Mississippi Trauma Advisory Committee acting in advisory capacities, to administer the disbursements of those funds according to adopted trauma care system regulations. Any Level I trauma care facility or center located in a state contiguous to the State of Mississippi that participates in the Mississippi trauma care system and has been designated by the department to perform specified trauma care services within the trauma care system under standards adopted by the department shall receive a reasonable amount of reimbursement from the department for the cost of providing trauma care services to Mississippi residents whose treatment is uncompensated.

(7) In addition to the trauma-related duties provided for in this section, the Board of Health shall develop a plan for the delivery of services to Mississippi burn victims through the existing trauma care system of hospitals. Such plan shall be operational by July 1, 2005, and shall include:

(a) Systems by which burn patients will be assigned or transferred to hospitals capable of meeting their needs;

(b) Until the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, procedures for allocating funds appropriated from the Mississippi Burn Care Fund to hospitals that provide services to Mississippi burn victims; and

(c) Such other provisions necessary to provide burn care for Mississippi residents, including reimbursement for travel, lodging, if no free lodging is available, meals and other reasonable travel-related expenses incurred by burn victims, family members and/or caregivers, as established by the State Board of Health through rules and regulations.

After the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, the Board of Health shall revise the plan to include the Mississippi Burn Center.

SOURCES: Laws, 1974, ch. 507, § 3; Laws, 1982, ch. 344, § 2; Laws, 1989, ch. 545, § 1; Laws, 1991, ch. 597, § 1; Laws, 1992, ch. 491 § 27; Laws, 1998, ch. 429, § 2; Laws, 2005, 2nd Ex Sess, ch. 47, § 8; Laws, 2007, ch. 569, § 8; Laws, 2008, ch. 549, § 2, eff from and after July 1, 2008.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the paragraph (7)(b). The phrase “Section 1 of this act” was changed to “Section 37-115-45”. The Joint Committee ratified the correction at its July 13, 2009 meeting.

Editor's Note — Laws of 2008, ch. 549, § 9 provides:

"SECTION 9. This act shall stand repealed on July 1, 2011."

Amendment Notes — The 2007 amendment, in (7), added "Until the Mississippi Burn Center ... is operational" in (b), and added the last paragraph.

The 2008 amendment, in (5), added the sixth through ninth sentences; added the last sentence of (6); added the language following "Mississippi residents" at the end of (7)(c); and made a minor stylistic change.

Cross References — General powers and duties of state board of health, see § 41-3-15.

Powers and duties of the state board of health and the EMS director to administer disbursements from the emergency medical services operating fund, see § 41-59-61.

Mississippi Burn Center, see § 37-115-45.

ATTORNEY GENERAL OPINIONS

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from

traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-7. Advisory council [Repealed effective July 1, 2011].

(1) There is created an emergency medical services advisory council to consist of the following members who shall be appointed by the Governor:

(a) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Trauma Committee, American College of Surgeons;

(b) One (1) licensed physician to be appointed from a list of nominees who are actively engaged in rendering emergency medical services presented by the Mississippi State Medical Association;

(c) One (1) registered nurse whose employer renders emergency medical services, to be appointed from a list of nominees presented by the Mississippi Nurses Association;

(d) Two (2) hospital administrators who are employees of hospitals which provide emergency medical services, to be appointed from a list of nominees presented by the Mississippi Hospital Association;

(e) Two (2) operators of ambulance services;

(f) Three (3) officials of county or municipal government;

(g) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Chapter of the American College of Emergency Physicians;

(h) One (1) representative from each designated trauma care region, to be appointed from a list of nominees submitted by each region;

(i) One (1) registered nurse to be appointed from a list of nominees submitted by the Mississippi Emergency Nurses Association;

(j) One (1) EMT-Paramedic whose employer renders emergency medical services in a designated trauma care region;

(k) One (1) representative from the Mississippi Department of Rehabilitation Services;

(l) One (1) member who shall be a person who has been a recipient of trauma care in Mississippi or who has an immediate family member who has been a recipient of trauma care in Mississippi;

(m) One (1) licensed neurosurgeon to be appointed from a list of nominees presented by the Mississippi State Medical Association;

(n) One (1) licensed physician with certification or experience in trauma care to be appointed from a list of nominees presented by the Mississippi Medical and Surgical Association; and

(o) One (1) representative from the Mississippi Firefighters Memorial Burn Association, to be appointed by the association's governing body.

The terms of the advisory council members shall begin on July 1, 1974. Four (4) members shall be appointed for a term of two (2) years, three (3) members shall be appointed for a term of three (3) years, and three (3) members shall be appointed for a term of four (4) years. Thereafter, members shall be appointed for a term of four (4) years. The executive officer or his designated representative shall serve as ex officio chairman of the advisory council. Advisory council members may hold over and shall continue to serve until a replacement is named by the Governor.

The advisory council shall meet at the call of the chairman at least annually. For attendance at such meetings, the members of the advisory council shall be reimbursed for their actual and necessary expenses including food, lodging and mileage as authorized by law, and they shall be paid per diem compensation authorized under Section 25-3-69.

The advisory council shall advise and make recommendations to the board regarding rules and regulations promulgated pursuant to this chapter.

(2) There is created a committee of the Emergency Medical Services Advisory Council to be named the Mississippi Trauma Advisory Committee (hereinafter "MTAC"). This committee shall act as the advisory body for trauma care system development and provide technical support to the department in all areas of trauma care system design, trauma standards, data collection and evaluation, continuous quality improvement, trauma care system funding, and evaluation of the trauma care system and trauma care programs. The membership of the Mississippi Trauma Advisory Committee shall be comprised of Emergency Medical Services Advisory Council members appointed by the chairman.

SOURCES: Laws, 1974, ch. 507, § 4; Laws, 1983, ch. 522, § 37; Laws, 1986, ch. 363; Laws, 1998, ch. 429, § 3; Laws, 2008, ch. 325, § 1; Laws, 2008, ch. 549, § 3, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 1 of ch. 325, Laws of 2008, effective from and after July 1, 2008 (approved March 24, 2008), amended this section. Section 3 of ch. 549, Laws of 2008, effective from and after July 1, 2008 (approved May 10, 2008), also amended this section. As set out above, this section reflects the language of both sections pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee ratified the integration of these amendments as consistent with the legislative intent at its August 5, 2008, meeting.

Editor's Note — Laws of 2008, ch. 549, § 9 provides:

“SECTION 9. This act shall stand repealed on July 1, 2011.”

Amendment Notes — The first 2008 amendment (ch. 325), in (1), added (o), and made minor stylistic changes.

The second 2008 amendment (ch. 549), added (1)(n); added the last sentence of the second-to-last paragraph of (1); and made minor stylistic changes.

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Advisory council's duties as to the administration of funds appropriated to the state board of health from the emergency medical services operating fund, see § 41-59-61.

ATTORNEY GENERAL OPINIONS

A physician on staff at the Elvis Presley Memorial Trauma Center in Memphis may be appointed by the governor as an EMS Advisory Council representative of the trauma region encompassing that hospital when that physician lives and practices in Tennessee. Whitfield, July 23, 2004, A.G. Op. 04-0350.

§ 41-59-9. License and permit required.

From and after October 1, 1974, no person, firm, corporation, association, county, municipality, or metropolitan government or agency, either as owner, agent or otherwise, shall hereafter furnish, operate, conduct, maintain, advertise or otherwise engage in the business of service of transporting patients upon the streets, highways or airways of Mississippi unless he holds a currently valid license and permit, for each ambulance, issued by the board.

SOURCES: Laws, 1974, ch. 507, § 5(1), eff from and after passage (approved April 3, 1974).

§ 41-59-11. Application for license.

Application for license shall be made to the board by private firms or nonfederal governmental agencies. The application shall be made upon forms in accordance with procedures established by the board and shall contain the following:

(a) The name and address of the owner of the ambulance service or proposed ambulance service;

(b) The name in which the applicant is doing business or proposes to do business;

(c) A description of each ambulance including the make, model, year of manufacture, motor and chassis numbers, color scheme, insignia, name, monogram or other distinguishing characteristics to be used to designate applicant's ambulance;

(d) The location and description of the place or places from which the ambulance service is intended to operate; and

(e) Such other information as the board shall deem necessary.

Each application for a license shall be accompanied by a license fee to be fixed by the board, which shall be paid to the board.

SOURCES: Laws, 1974, ch. 507, § 5(2); Laws, 1979, ch. 445, § 1; Laws, 1982, ch. 345, § 1; Laws, 1991, ch. 606, § 3, eff from and after July 1, 1991.

§ 41-59-13. Issuance of license.

The board shall issue a license which shall be valid for a period of one (1) year when it determines that all the requirements of this chapter have been met.

SOURCES: Laws, 1974, ch. 507, § 5(3), eff from and after passage (approved April 3, 1974).

§ 41-59-15. Periodic inspections.

Subsequent to issuance of any license, the board shall cause to be inspected each ambulance service, including ambulances, equipment, personnel, records, premises and operational procedures whenever such inspection is deemed necessary, but in any event not less than two (2) times each year. The periodic inspection herein required shall be in addition to any other state or local safety or motor vehicle inspections required for ambulances or other motor vehicles provided by law or ordinance.

SOURCES: Laws, 1974, ch. 507, § 5(4), eff from and after passage (approved April 3, 1974).

§ 41-59-17. Suspension or revocation of license; renewal.

(1) The board is hereby authorized to suspend or revoke a license whenever it determines that the holder no longer meets the requirements prescribed for operating an ambulance service.

(2) A license issued under this chapter may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board. Renewal of any license issued under the provisions of this chapter shall require conformance with all the requirements of this chapter as upon original licensing.

SOURCES: Laws, 1974, ch. 507, § 5(5, 6); Laws, 1979, ch. 445, § 2; Laws, 1982, ch. 345, § 2; Laws, 1991, ch. 606, § 4, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — By license holder — Against administrative agency — To enjoin further proceedings to

suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

§ 41-59-19. Changes of ownership.

The board is authorized to provide for procedures to be utilized in acting on changes of ownership in accordance with regulations established by the board.

SOURCES: Laws, 1974, ch. 507, § 5(7), eff from and after passage (approved April 3, 1974).

§ 41-59-21. Licensee to conform with local laws or regulations.

The issuance of a license shall not be construed to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance not in conformity with any ordinance or regulation enacted by any county, municipality or special purpose district or authority.

SOURCES: Laws, 1974, ch. 507, § 5(8), eff from and after passage (approved April 3, 1974).

§ 41-59-23. Ambulance permit.

(1) Before a vehicle can be operated as an ambulance, its licensed owner must apply for and receive an ambulance permit issued by the board for such vehicle. Application shall be made upon forms and according to procedures established by the board. Each application for an ambulance permit shall be accompanied by a permit fee to be fixed by the board, which shall be paid to the board. Prior to issuing an original or renewal permit for an ambulance, the vehicle for which the permit is issued shall be inspected and a determination made that the vehicle meets all requirements as to vehicle design, sanitation, construction, medical equipment and supplies set forth in this chapter and regulations promulgated by the board. Permits issued for ambulance shall be valid for a period not to exceed one (1) year.

(2) The board is hereby authorized to suspend or revoke an ambulance permit any time it determines that the vehicle and/or its equipment no longer meets the requirements specified by this chapter and regulations promulgated by the board.

(3) The board may issue temporary permits valid for a period not to exceed ninety (90) days for ambulances not meeting required standards when it determines the public interest will thereby be served.

(4) When a permit has been issued for an ambulance as specified herein, the ambulance records relating to maintenance and operation of such ambulance shall be open to inspection by a duly authorized representative of the board during normal working hours.

(5) An ambulance permit issued under this chapter may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board. Renewal of any ambulance permit issued under the provisions of this chapter shall require conformance with all requirements of this chapter.

SOURCES: Laws, 1974, ch. 507, § 6; Laws, 1979, ch. 445, § 3; Laws, 1982, ch. 345, § 3; Laws, 1991, ch. 606, § 5, eff from and after July 1, 1991.

§ 41-59-25. Standards for ambulance vehicles.

(1) Standards for the design, construction, equipment, sanitation and maintenance of ambulance vehicles shall be developed by the board with the advice of the advisory council. Each standard may be revised as deemed necessary by the board when it determines, with the advice of the advisory council, that such will be in the public interest. However, standards for design and construction shall not take effect until July 1, 1979; and such standards when promulgated shall substantially conform to any pertinent recommendations and criteria established by the American College of Surgeons and the National Academy of Sciences, and shall be based on a norm that the ambulance shall be sufficient in size to transport one (1) litter patient and an emergency medical technician with space around the patient to permit a technician to administer life supporting treatment to at least one (1) patient during transit.

(2) On or after July 1, 1975, each ambulance shall have basic equipment determined essential by the board with the advice of the advisory council.

(3) Standards governing the sanitation and maintenance of ambulance vehicles shall require that the interior of the vehicle and the equipment therein be maintained in a manner that is safe, sanitary, and in good working order at all times.

(4) Standards for the design, construction, equipment and maintenance of special use EMS vehicles shall be developed by the board with advice of the advisory council.

SOURCES: Laws, 1974, ch. 507, § 7(1-3); Laws, 1991, ch. 482, § 2, eff from and after July 1, 1991.

Cross References — Definition of authorized emergency vehicles, see § 63-3-103. Lights required on emergency vehicles, see § 63-7-19.

§ 41-59-27. Insurance.

There shall be at all times in force and effect on any ambulance vehicle operating in this state insurance issued by an insurance company licensed to do business in this state, which shall provide coverage:

(a) For injury to or death of individuals resulting from any cause for which the owner of said ambulance would be liable regardless of whether the ambulance was being driven by the owner or his agent; and

(b) Against damage to the property of another, including personal property.

The minimum amounts of such insurance coverage shall be determined by the board with the advice of the advisory council, except that the minimum coverage shall not be less than twenty-five thousand dollars (\$25,000.00) for bodily injury to or death of one (1) person in any one (1) accident, fifty thousand dollars (\$50,000.00) for bodily injury to or death of two (2) or more persons in any one (1) accident, and ten thousand dollars (\$10,000.00) for damage to or destruction of property of others in any one (1) accident.

SOURCES: Laws, 1974, ch. 507, § 7(4), eff from and after passage (approved April 3, 1974).

RESEARCH REFERENCES

ALR. Liability of operator of ambulance service for personal injuries to person being transported. 21 A.L.R.2d 910.

Liability for personal injury or property damage from operation of ambulance. 84 A.L.R.2d 121.

Liability of operator of ambulance ser-

vice for personal injuries to person being transported. 68 A.L.R.4th 14.

Am Jur. 8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 812 et seq.

CJS. 60A C.J.S., Motor Vehicles §§ 376, 377.

§ 41-59-29. Personnel required for transporting patients.

From and after January 1, 1976, every ambulance, except those specifically excluded from the provisions of this chapter, when transporting patients in this state, shall be occupied by at least one (1) person who possesses a valid emergency medical technician state certificate or medical/nursing license and a driver with a valid resident driver's license.

SOURCES: Laws, 1974, ch. 507, § 8(1), eff from and after passage (approved April 3, 1974).

§ 41-59-31. Emergency medical technicians; training program.

The board shall develop an emergency medical technicians training program based upon the nationally approved United States Department of Transportation "Basic Training Program for Emergency Medical Technicians-Ambulance" prepared in compliance with recommendations of the National Academy of Sciences. The program shall be periodically revised by the board to meet new and changing needs.

SOURCES: Laws, 1974, ch. 507, § 8(2), eff from and after passage (approved April 3, 1974).

§ 41-59-33. Emergency medical technicians; certification.

Any person desiring certification as an emergency medical technician shall apply to the board using forms prescribed by the board. Each application for an emergency medical technician certificate shall be accompanied by a certificate fee to be fixed by the board, which shall be paid to the board. Upon the successful completion of the board's approved emergency medical technical training program, the board shall make a determination of the applicant's qualifications as an emergency medical technician as set forth in the regulations promulgated by the board, and shall issue an emergency medical technician certificate to the applicant.

SOURCES: Laws, 1974, ch. 507, § 8(3); Laws, 1979, ch. 445, § 4; Laws, 1982, ch. 345, § 4; Laws, 1991, ch. 606, § 6, eff from and after July 1, 1991.

§ 41-59-35. Emergency medial technicians; period of certification; renewal, suspension or revocation of certificate; use of certain EMT titles without certification prohibited.

(1) An emergency medical technician certificate so issued shall be valid for a period not exceeding two (2) years from the date of issuance and may be renewed upon payment of a renewal fee to be fixed by the board, which shall be paid to the board, provided that the holder meets the qualifications set forth in this Chapter 59 and Chapter 60 and rules and regulations promulgated by the board.

(2) The board is authorized to suspend or revoke a certificate so issued at any time it is determined that the holder no longer meets the prescribed qualifications.

(3) It shall be unlawful for any person, corporation or association to, in any manner, represent himself or itself as an Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, Emergency Medical Technician-Paramedic, or Emergency Medical Services Driver, or use in connection with his or its name the words or letters of EMT, emt, paramedic, or any other letters, words, abbreviations or insignia which would indicate or imply that he or it is an Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, Emergency Medical Technician-Paramedic, or Emergency Medical Services Driver, unless certified in accordance with Chapters 59 and 60 of this title and in accordance with the rules and regulations promulgated by the board. It shall be unlawful to employ an uncertified Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, or Emergency Medical Technician-Paramedic to provide basic or advanced life support services.

(4) Any Emergency Medical Technician-Basic, Emergency Medical Technician-Intermediate, Emergency Medical Technician-Paramedic, or Emergency Medical Services Driver who violates or fails to comply with these statutes or the rules and regulations promulgated by the board hereunder shall be subject, after due notice and hearing, to an administrative fine not to exceed One Thousand Dollars (\$1,000.00).

SOURCES: Laws, 1974, ch. 507, § 8(4, 5); Laws, 1979, ch. 445, § 5; Laws, 1982, ch. 345, § 5; Laws, 1991, ch. 606, § 7; Laws, 2001, ch. 542, § 1, eff from and after July 1, 2001.

§ 41-59-37. Temporary ambulance attendant's permit.

The board may, in its discretion, issue a temporary ambulance attendant's permit which shall not be valid for more than one (1) year from the date of issuance, and which shall be renewable to an individual who may or may not meet qualifications established pursuant to this chapter upon determination that such will be in the public interest.

SOURCES: Laws, 1974, ch. 507, § 8(6), eff from and after passage (approved April 3, 1974).

§ 41-59-39. Standards for invalid vehicles.

The board, after consultation with the emergency medical services advisory council, shall establish minimum standards which permit the operation of invalid vehicles as a separate class of ambulance service.

SOURCES: Laws, 1974, ch. 507 § 9, eff from and after passage (approved April 3, 1974).

§ 41-59-41. Records.

Each licensee of an ambulance service shall maintain accurate records upon such forms as may be provided, and contain such information as may be required by the board concerning the transportation of each patient within this state and beyond its limits. Such records shall be available for inspection by the board at any reasonable time, and copies thereof shall be furnished to the board upon request.

SOURCES: Laws, 1974, ch. 507, § 10, eff from and after passage (approved April 3, 1974).

§ 41-59-43. Exemptions.

The following are exempted from the provisions of this chapter:

(a) The occasional use of a privately and/or publicly owned vehicle not ordinarily used in the business of transporting persons who are sick, injured, wounded, or otherwise incapacitated or helpless, or operating in the performance of a lifesaving act.

(b) A vehicle rendering services as an ambulance in case of a major catastrophe or emergency.

(c) Vehicles owned and operated by rescue squads chartered by the state as corporations not for profit or otherwise existing as nonprofit associations which are not regularly used to transport sick, injured or otherwise incapacitated or helpless persons except as a part of rescue operations.

(d) Ambulances owned and operated by an agency of the United States Government.

SOURCES: Laws, 1974, ch. 507, § 11, eff from and after passage (approved April 3, 1974).

§ 41-59-45. Penalties; injunctive relief.

(1) It shall be the duty of the licensed owner of any ambulance service or other employer of emergency medical technicians for the purpose of providing basic or advanced life support services to insure compliance with the provi-

sions of this Chapter 59 and Chapter 60 and all rules and regulations promulgated by the board.

(2) Any person, corporation or association that violates any rule or regulation promulgated by the board pursuant to these statutes regarding the provision of ambulance services or the provision of basic or advanced life support services by emergency medical technicians shall, after due notice and hearing, be subject to an administrative fine not to exceed One Thousand Dollars (\$1,000.00) per occurrence.

(3) Any person violating or failing to comply with any other provisions of this Chapter 59 or Chapter 60 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined an amount not to exceed Fifty Dollars (\$50.00) or be imprisoned for a period not to exceed thirty (30) days, or both, for each offense.

(4) The board may cause to be instituted a civil action in the chancery court of the county in which any alleged offender of this Chapter 59 or Chapter 60 may reside or have his principal place of business for injunctive relief to prevent any violation of any provision of this Chapter 59 or Chapter 60, or any rules or regulation adopted by the board pursuant to the provisions of this Chapter 59 or Chapter 60.

(5) Each day that any violation or failure to comply with any provision of this chapter or any rule or regulation promulgated by the board thereto is committed or permitted to continue shall constitute a separate and distinct offense under this section, except that the court may, in its discretion, stay the cumulation of penalties.

It shall not be considered a violation of this Chapter 59 or Chapter 60 for a vehicle domiciled in a nonparticipating jurisdiction to travel in a participating jurisdiction.

SOURCES: Laws, 1974, ch. 507, § 12; Laws, 2001, ch. 542, § 2, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-59-47. Options of counties and municipalities as to participation.

The provisions of this chapter shall apply to all counties and incorporated municipalities except those counties and incorporated municipalities electing not to comply as expressed to the board in a written resolution by the governing body of such county or incorporated municipality. The election of any county to be included or excluded shall in no way affect the election of any incorporated municipality to be included or excluded. If any county or municipality elects to be excluded from this chapter, they may later elect to be included by resolution.

All financial grants administered by the state for emergency medical services pertaining to this chapter shall be made available to those counties

and incorporated municipalities which are governed by the provisions of this chapter.

SOURCES: Laws, 1974, ch. 507, § 13, eff from and after passage (approved April 3, 1974).

§ 41-59-49. Appeal from decision of board.

Any person, firm, corporation, association, county, municipality or metropolitan government or agency whose application for a permit or license has been rejected or whose permit or license is suspended or revoked by the board shall have the right to appeal such decision, within thirty (30) days after receipt of the board's written decision, to the chancery court of the county where the applicant or licensee is domiciled. The appeal before the chancery court shall be de novo and the decision of the chancery court may be appealed to the supreme court in the manner provided by law.

SOURCES: Laws, 1974, ch. 507, § 14, eff from and after passage (approved April 3, 1974).

§ 41-59-51. Districts; authority to establish.

A special subdivision to be known as an emergency medical service district may be established by the board of supervisors or boards of supervisors of any county or group of counties, and/or governing authority or authorities of a municipality or municipalities located in such counties, acting separately or jointly in any combination, to provide emergency hospital care and ambulance services for an area composed of all or part of the geographic areas under the jurisdiction of such boards of supervisors or municipal governing authorities, as may be agreed upon.

SOURCES: Laws, 1974, ch. 507, § 15(1), eff from and after passage (approved April 3, 1974).

ATTORNEY GENERAL OPINIONS

Under Sections 19-5-151 and 41-59-51, Fire Protection and EMS Districts are two separate and distinct entities and may not be created as one entity. Hatten, August 14, 1995, A.G. Op. #95-0529.

§ 41-59-53. Districts; procedure for establishing.

The boards of supervisors and the municipal governing authorities which intend to establish an emergency medical service district shall set forth such intention, along with a description of the area to be served, the nature of services to be provided, the allocation of expenses among the participating subdivisions, and the form of administration for such district in substantially similar resolutions which shall be adopted by each governing board participating in the emergency medical service district.

SOURCES: Laws, 1974, ch. 507, § 15(2), eff from and after passage (approved April 3, 1974).

§ 41-59-55. Districts; administration.

Any emergency medical service district created pursuant to this chapter shall be administered in one of the following manners:

(a) The governing authorities of the participating political subdivisions shall appoint a person or persons, who may be an elected official of such political subdivision, to a board which shall be authorized to promulgate policy for and guide the administration of the activities of the district; or

(b) The governing authorities, by mutual and unanimous agreement, shall appoint an executive manager who shall have full authority over the operation of the district.

SOURCES: Laws, 1974, ch. 507, § 15(3), eff from and after passage (approved April 3, 1974).

§ 41-59-57. Districts; power to receive and expend funds.

The emergency medical service districts authorized under this chapter are empowered to receive funds from all sources and are authorized to expend such funds as may be available for any necessary and proper purpose in the manner provided by law for municipalities. The participating political subdivisions may expend funds from any source for the necessary and proper support of such a district, and they may expend such funds by making a lump sum payment to the board or manager designated to administer the district.

SOURCES: Laws, 1974, ch. 507, § 15(4), eff from and after passage (approved April 3, 1974).

§ 41-59-59. Funds for support and maintenance of districts.

(1) The board of supervisors of any county of the state participating in the establishment of an emergency medical service district under the provisions of Section 41-59-51 and related statutes of the Mississippi Code of 1972 may set aside, appropriate and expend moneys from the general fund for the support and maintenance of the district. In the event the district is comprised of more than one (1) county, the contributions for support and maintenance may be made on a per capita basis.

(2) Emergency medical service districts may borrow funds in anticipation of the receipt of tax monies as otherwise provided by law for counties or municipalities.

SOURCES: Laws, 1975, ch. 455; Laws, 1986, ch. 400, § 27, eff from and after October 1, 1986.

§ 41-59-61. Emergency medical services operating fund; assessment on traffic violations.

(1) The assessments that are collected under subsections (1) and (2) of Section 99-19-73 shall be deposited in a special fund that is created in the State Treasury to be designated the “Emergency Medical Services Operating Fund.” The Legislature may make appropriations from the Emergency Medical Services Operating Fund to the State Board of Health for the purpose of defraying costs of administration of the Emergency Medical Services Operating Fund (EMSOF) and for redistribution of those funds to the counties, municipalities and organized medical service districts (hereinafter referred to as “governmental units”) for the support of the Emergency Medical Services programs. The State Board of Health, with the Emergency Medical Services Advisory Council acting in an advisory capacity, shall administer the disbursement to those governmental units of any funds appropriated to the board from the Emergency Medical Services Operating Fund and the utilization of those funds by the governmental units.

(2) Funds appropriated from the Emergency Medical Services Operating Fund to the State Board of Health shall be made available to all such governmental units to support the Emergency Medical Services programs therein, and those funds shall be distributed to each governmental unit based upon its general population relative to the total population of the state. Disbursement of those funds shall be made on an annual basis at the end of the fiscal year upon the request of each governmental unit. Funds distributed to those governmental units shall be used in addition to existing annual Emergency Medical Services budgets of the governmental units, and no such funds shall be used for the payment of any attorney’s fees. The Director of the Emergency Medical Services program or his appointed designee is authorized to require financial reports from the governmental units utilizing these funds in order to provide satisfactory proof of the maintenance of the funding effort by the governmental units.

SOURCES: Laws, 1982, ch. 344, § 1; Laws, 1983, ch. 522, § 38; Laws, 1985, ch. 352; Laws, 1985, ch. 440, § 6; Laws, 1990, ch. 329, § 7; Laws, 2007, ch. 514, § 12, *eff from and after June 30, 2007*.

Editor’s Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment inserted “Operating Fund (EMSOF)” preceding “and for redistribution” in the second sentence of (1); and made minor stylistic changes throughout.

Cross References — Mississippi Trauma Care Systems Fund deposits from portion of assessments collected under this section, see § 41-59-75.

Deposit of portion of standard state assessment into Emergency Medical Services Operating Fund, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

Where a county provides a subsidy to a private ambulance service and the subsidy is then returned to the county, such arrangement will not be viewed as an existing emergency medical services budget as required by the statute. Thompson, July 10, 1998, A.G. Op. #98-0157.

A reasonable reading of the statute would not appear to intend the disbursement of Emergency Medical Services Op-

erating Funds to groups or activities not within the jurisdiction of the Mississippi State Department of Health and its Emergency Medical Services program, although a decision on this question is within the discretion of the Mississippi State Board of Health with the EMS Advisory Council acting in its advisory capacity. Thompson, July 10, 1998, A.G. Op. #98-0157.

§ 41-59-63. Membership subscription programs for prepaid ambulance service not to constitute insurance.

The solicitation of membership subscriptions, the acceptance of membership applications, the charging of membership fees, and the furnishing of prepaid or discounted ambulance service to subscription members and designated members of their households by either a public or private ambulance service licensed and regulated by the State Board of Health pursuant to Section 41-59-1 et seq. shall not constitute the writing of insurance and the agreement under and pursuant to which such prepaid or discounted ambulance service is provided to the subscription members and to designated members of their households shall not constitute a contract of insurance.

SOURCES: Laws, 1988, ch. 541, § 1; reenacted, 1991, ch. 348, § 1; reenacted, 1992, ch. 327, § 1, eff from and after July 1, 1992.

§ 41-59-65. Application for permit to conduct membership subscription program; fees; renewals.

Either a public or private ambulance service licensed and regulated by the State Board of Health desiring to offer such a membership subscription program shall make application for permit to conduct and implement such program to the State Board of Health. The application shall be made upon forms in accordance with procedures established by the board and shall contain the following:

- (a) The name and address of the owner of the ambulance service;
- (b) The name in which the applicant is doing business;
- (c) The location and description of the place or places from which the ambulance service operates;
- (d) The places or areas in which the ambulance service intends to conduct and operate a membership subscription program; and
- (e) Such other information as the board shall deem necessary.

Each application for a permit shall be accompanied by a permit fee of Five Hundred Dollars (\$500.00), which shall be paid to the board. The permit shall be issued to expire the next ensuing December 31. The permit issued under this section may be renewed upon payment of a renewal fee of Five Hundred

Dollars (\$500.00), which shall be paid to the board. Renewal of any permit issued under this section shall require conformance with all requirements of this chapter.

SOURCES: Laws, 1988, ch. 541, § 2; reenacted, 1991, ch. 348, § 2; reenacted, 1992, ch. 327, § 2, eff from and after July 1, 1992.

§ 41-59-67. Requirements for issuance of permit; reserve fund; ambulance service to pay cost of collection of judgment against fund.

The issuance of a permit to conduct and implement a membership subscription program shall require the following:

(a) The posting of a surety bond with one or more surety companies to be approved by the State Board of Health, in the amount of Five Thousand Dollars (\$5,000.00) for every one thousand (1,000) subscribers or portion thereof; and

(b) The establishment of a reserve fund to consist of a deposit to the reserve fund with any depository approved by the state for the benefit of the subscription members in the amount of Three Dollars (\$3.00) for each subscription member currently subscribing to the subscription program, but not for the designated members of the subscribing member's household, to guarantee perpetuation of the subscription membership program until all memberships are terminated; and

(c) No further deposits shall be required to be made by the ambulance service to the reserve fund after the aggregate sum of the principal amount of said surety bond plus the deposits in the reserve fund is equal to Two Hundred Thousand Dollars (\$200,000.00).

In any action brought by a subscriber against the surety bond or the reserve fund, the cost of collection upon a judgment rendered in favor of the subscriber, including attorney's fees, shall be paid by the ambulance service.

SOURCES: Laws, 1988, ch. 541, § 3; reenacted, 1991, ch. 348, § 3; reenacted, 1992, ch. 327, § 3, eff from and after July 1, 1992.

§ 41-59-69. Annual report of ambulance service conducting subscription program.

Annual reports shall be filed with the State Board of Health by the ambulance service permitted to conduct and implement a membership subscription program in the manner and form prescribed by the State Board of Health, which report shall contain the following:

(a) The name and address of the ambulance service conducting the program;

(b) The number of members subscribing to the subscription program;

(c) The revenues generated by subscriptions to the program; and

(d) The name and address of the depository bank in which the reserve fund is deposited and the amount of deposit in said reserve fund.

SOURCES: Laws, 1988, ch. 541, § 4; reenacted, 1991, ch. 348, § 4; reenacted, 1992, ch. 327, § 4, eff from and after July 1, 1992.

§ 41-59-71. Methods of soliciting members; license not required.

Solicitation of membership in the subscription program may be made through direct advertising, group solicitation, by officers and employees of the ambulance service or by individuals without the necessity of licensing of such solicitors.

SOURCES: Laws, 1988, ch. 541, § 5; reenacted, 1991, ch. 348, § 5; reenacted, 1992, ch. 327, § 5, eff from and after July 1, 1992.

§ 41-59-73. Repealed.

Repealed by Laws, 1992, ch. 327, § 6, eff from and after July 1, 1992.
[Laws, 1991, ch. 348, § 7]

Editor's Note — Former § 41-59-73 provided for the repeal of sections 41-59-63 through 41-59-71.

Laws of 1988, ch. 541, § 6, provided that sections 41-59-63 through 41-59-71 would stand repealed from and after July 1, 1991. Subsequently, Laws of 1991, ch. 348, § 6, amended Laws of 1988, ch. 541, § 6, deleting the provision for the repeal of sections 41-59-63 through 41-59-71. However, Laws of 1991, ch. 348, § 7, added a new section, 41-59-73, providing for the prospective repeal of sections 41-59-63 through 41-59-71. Subsequently, Laws of 1992, ch. 327, § 6, repealed § 41-59-73, effective from and after July 1, 1992.

§ 41-59-75. Mississippi Trauma Care Systems Fund established; Mississippi Trauma Care Escrow Fund created [Repealed effective July 1, 2011].

(1) The Mississippi Trauma Care Systems Fund is established. Fifteen Dollars (\$15.00) collected from each assessment of Twenty Dollars (\$20.00) under subsection (1) of Section 99-19-73 and Thirty Dollars (\$30.00) collected from each assessment of Forty-five Dollars (\$45.00) under subsection (2) of Section 99-19-73, as provided in Section 41-59-61, and any other funds made available for funding the trauma care system, shall be deposited into the fund. Funds appropriated from the Mississippi Trauma Care Systems Fund to the State Board of Health shall be made available for department administration and implementation of the comprehensive state trauma care plan for distribution by the department to designated trauma care regions for regional administration, for the department's trauma specific public information and education plan, and to provide hospital and physician indigent trauma care block grant funding to trauma centers designated by the department. All designated trauma care hospitals are eligible to contract with the department for these funds.

(2) The Mississippi Trauma Care Escrow Fund is created as a special fund in the State Treasury. Whenever the amount in the Mississippi Trauma Care

Systems Fund exceeds Twenty-five Million Dollars (\$25,000,000.00) in any fiscal year, the State Fiscal Officer shall transfer the amount above Twenty-five Million Dollars (\$25,000,000.00) to the Trauma Care Escrow Fund. Monies in the Trauma Care Escrow Fund shall not lapse into the State General Fund at the end of the fiscal year, and all interest and other earnings on the monies in the Trauma Care Escrow Fund shall be deposited to the credit of the Trauma Care Escrow Fund.

SOURCES: Laws, 1998, ch. 429, § 4; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2008, ch. 549, § 4, eff from and after July 1, 2008.

Editor's Note — Laws of 2008, ch. 549, § 9 provides:

"SECTION 9. This act shall stand repealed on July 1, 2011."

Amendment Notes — The 2008 amendment, in the second sentence of (1), substituted "Fifteen Dollars (\$15.00)" for "Ten Dollars (\$10.00)" and "Twenty Dollars (\$20.00)" for "Fifteen Dollars (\$15.00)," and inserted "under subsection (1) ... under subsection (2) of Section 99-19-73"; and added (2).

Cross References — Assessment of additional fees upon license tags and decals to be deposited in the Mississippi Trauma Care Systems Fund established under this section, see § 27-19-43.

State Board of Health authorization to receive and disburse funds appropriated from the Mississippi Trauma Care System Fund, see § 41-59-5.

Assessment of additional fees for speeding, reckless and careless driving violations to be deposited in the Mississippi Trauma Care Systems Fund established under this section, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

It is within the discretion of the Department of Health to determine the type of organizational structure that will best meet the intent of the legislature to "reduce death and disability resulting from

traumatic injury" through the establishment of a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. Thompson, May 21, 1999, A.G. Op. #99-0195.

§ 41-59-77. Trauma registry data confidential and not subject to discovery or introduction into evidence in civil actions.

Data obtained under this chapter for use in the trauma registry is for the confidential use of the Mississippi State Department of Health and the persons, public entities or private entities that participate in the collection of the trauma registry data.

Any data which identifies an individual or a family unit that is collected for use in the trauma registry shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action.

SOURCES: Laws, 1998, ch. 429, § 5, eff from and after July 1, 1998.

Editor's Note — Laws of 1998, ch. 429, effective from and after July 1, 1998, amended Sections 41-59-3 through 41-59-7, 41-63-1 and 99-19-73, and enacted Sections 41-59-75 and 41-59-77.

ATTORNEY GENERAL OPINIONS

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. 02-0645.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. #02-0645.

§ 41-59-79. Certification of first responders by State Board of Health.

Any person desiring certification as a medical first responder shall apply to the board using forms prescribed by the board. Each application for a medical first responder certificate shall be accompanied by a certificate fee to be fixed by the board, which shall be paid to the board. Upon the successful completion of the board's approved medical first responder training program, the board shall make a determination of the applicant's qualifications as a medical first responder as set forth in the regulations promulgated by the board, and shall issue a medical first responder certificate to the applicant.

SOURCES: Laws, 2002, ch. 623, § 3; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 3; Laws, 2004, ch. 581, § 2, eff from and after July 1, 2004.

§ 41-59-81. Promulgation of rules and regulations governing first responder basic life support.

(1) The State Board of Health is authorized to promulgate and enforce rules and regulations to provide for the best and most effective emergency medical care by medical first responders, and to comply with national standards for medical first responders. Notwithstanding any other provision of law, medical first responder personnel may be authorized to provide medical first responder services as defined by rules and regulations promulgated by the State Board of Health.

Rules and regulations promulgated under this authority shall, as a minimum:

(a) Define and authorize functions and training programs for medical first responder personnel; however, all those training programs shall meet or exceed the performance requirements of the most current training program "First Responder: National Standard Curriculum" as developed by the United States Department of Transportation, National Highway Traffic Safety Administration.

(b) Specify minimum testing and certification requirements and provide for continuing education and periodic recertification for all medical first responder personnel.

(2) Counties, municipalities and designated EMS districts may regulate the activities of medical first responders in addition to the regulation imposed by rules and regulations promulgated by the State Board of Health.

(3) The State Board of Health and the State Department of Health shall not be authorized to regulate the activities of, or require the state certification of, those first responders who are not medical first responders.

SOURCES: Laws, 2002, ch. 623, § 4; Laws, 2002, 1st Ex Sess, ch. 3, § 4; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 4; Laws, 2004, ch. 581, § 3, eff from and after July 1, 2004.

Editor's Note — Laws of 2002, ch. 623, § 5, as amended by Laws, 2002, 1st Ex Sess, ch. 3, § 5, provides as follows:

“SECTION 5. This act shall take effect and be in force from and after July 1, 2004.”

§ 41-59-83. Repealed.

Repealed by Laws, 2004, ch. 581, § 4.

[Laws, 2002, ch. 623, § 2; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 2, eff from and after June 21, 2002.]

Editor's Note — Former § 41-59-83 was entitled “Certain emergency medical personnel authorized to carry and administer epinephrine from auto-injector in treatment of persons experiencing allergic reactions.”

§ 41-59-85. Requirements for ambulances and special use medical service vehicles operating in emergency mode.

(1) The driver of any vehicle other than an official emergency vehicle shall not follow any moving ambulance that is engaged in an emergency medical call closer than five hundred (500) feet, or park the vehicle within two hundred (200) feet of where the ambulance has stopped and a patient is either being loaded or unloaded.

(2) Every ambulance and special use EMS vehicle shall be marked with red lights front and back and also may be marked with white and amber lights in addition to red lights.

(3) Drivers of ambulances and special use EMS vehicles shall operate in the emergency mode with warning lights and siren at all times while engaged in an emergency medical call and operating the emergency vehicle in a manner to take exceptions to the traffic laws and regulations as provided in Section 63-3-1 et seq., so as to warn other drivers of nonemergency vehicles to yield the right-of-way of the authorized emergency vehicle. Ambulances and special use EMS vehicles may use emergency warning lights only if they are engaged in an emergency medical call and they are stopped or parked, or if they are moving and operating the vehicle in a manner so as to abide by all traffic laws and regulations as provided in Section 63-3-1 et seq. No driver of any ambulance or special use EMS vehicle shall assume any special privilege from traffic laws and regulations except when the emergency vehicle is operated in the emergency mode, with warning lights and siren, while engaged in an emergency medical call.

SOURCES: Laws, 2004, ch. 425, § 2, eff from and after July 1, 2004.

CHAPTER 60

Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator

| | |
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| In General | 41-60-1 |
| Use of Automated External Defibrillator in Cases of Sudden Cardiac Death | 41-60-31 |

IN GENERAL

SEC.

41-60-1 through 41-60-9. Repealed.

41-60-11. Definitions.

41-60-13. Promulgation of rules and regulations by State Board of Health.

§§ 41-60-1 through 41-60-9. Repealed.

Repealed by Laws, 1979, ch. 488, § 3, eff from and after July 1, 1979.

[Laws, 1976, ch. 358, §§ 1-5]

Editor's Note — Former § 41-60-1 contained a legislative finding and declaration concerning emergency medical care.

Former § 41-60-3 defined the term "mobile intensive care paramedics."

Former § 41-60-5 authorized hospital ancillary medical services and ambulance services to establish emergency medical programs, utilizing mobile intensive care paramedics.

Former § 41-60-7 authorized mobile intensive care paramedics to perform certain specified emergency medical services.

Former § 41-60-9 authorized mobile intensive care paramedics to perform certain specified additional emergency medical services, upon authorization by a physician and upon order of such physician or a registered nurse, when direct communication was maintained between the paramedics and the physician or registered nurse.

§ 41-60-11. Definitions.

As used in Sections 41-60-11 and 41-60-13, unless the context otherwise requires, the term:

(a) "Advanced life support" shall mean a sophisticated level of prehospital and interhospital emergency care which includes basic life support functions including cardiopulmonary resuscitation (CPR), plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care and other authorized techniques and procedures.

(b) "Advanced life support personnel" shall mean persons other than physicians engaged in the provision of advanced life support, as defined and regulated by rules and regulations promulgated by the board.

(c) "Emergency medical technician-intermediate" shall mean a person specially trained in advanced life support modules, numbers I, II and III as developed for the United States Department of Transportation under Con-

tract No. DOT-HS-900-089, as authorized by the Mississippi State Board of Health.

(d) "Emergency medical technician-paramedic" shall mean a person specially trained in an advanced life support training program authorized by the Mississippi State Board of Health.

(e) "Medical control" shall mean directions and advice provided from a centrally designated medical facility staffed by appropriate personnel, operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life support services given by field and satellite facility personnel.

SOURCES: Laws, 1979, ch. 488, § 1; Laws, 2001, ch. 542, § 3, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a). The word "antiarythmic" was changed to "antiarrhythmic." The Joint Committee ratified the correction at its May 16, 2002 meeting.

RESEARCH REFERENCES

ALR. Liability for injury or death allegedly caused by activities of hospital "rescue team". 64 A.L.R.4th 1200.

§ 41-60-13. Promulgation of rules and regulations by State Board of Health.

The Mississippi State Board of Health is authorized to promulgate and enforce rules and regulations to provide for the best and most effective emergency medical care, and to comply with national standards for advanced life support. Notwithstanding any other provision of law, advanced life support personnel may be authorized to provide advanced life support services as defined by rules and regulations promulgated by the State Board of Health. Rules and regulations promulgated pursuant to this authority shall, as a minimum:

(a) Define and authorize appropriate functions and training programs for advanced life support trainees and personnel; provided, that all such training programs shall meet or exceed the performance requirements of the current training program for the emergency medical technician-paramedic, developed for the United States Department of Transportation.

(b) Specify minimum operational requirements which will assure medical control over all advanced life support services.

(c) Specify minimum testing and certification requirements and provide for continuing education and periodic recertification for all advanced life support personnel.

SOURCES: Laws, 1979, ch. 488, § 2; Laws, 2001, ch. 542, § 4, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

This statute grants sole authority to the State Department of Health in promulgating rules and regulations regarding all performance requirements of the training

programs for advanced life support trainees and personnel. Delahousey, Dec. 12, 2003, A.G. Op. 03-0654.

USE OF AUTOMATED EXTERNAL DEFIBRILLATOR IN CASES OF SUDDEN CARDIAC DEATH

Sec.

41-60-31. Definitions.

41-60-33. Requirements and training for use of automated external defibrillator.

41-60-35. Individual authorized to use automated external defibrillator not limited from practicing other authorized health occupations.

§ 41-60-31. Definitions.

As used in Sections 41-60-31 through 41-60-35.

(a) "AED" means an automated external defibrillator, which is a device, heart monitor and defibrillator that:

(i) Has received approval of its premarket notification filed under 21 USCS, Section 360(k) from the United States Food and Drug Administration;

(ii) Is capable of recognizing the presence or absence of ventricular fibrillation, which is an abnormal heart rhythm that causes the ventricles of the heart to quiver and renders the heart unable to pump blood, or rapid ventricular tachycardia, which is a rapid heartbeat in the ventricles and is capable of determining, without intervention by an operator, whether defibrillation should be performed; and

(iii) Upon determining that defibrillation should be performed, automatically charges and advises the operator to deliver hands-free external electrical shock to patients to terminate ventricular fibrillation or ventricular tachycardia when the heart rate exceeds a preset value.

(b) "Emergency medical services (EMS) notification" means activation of the 911 emergency response system or the equivalent.

SOURCES: Laws, 1999, ch. 489, § 1, eff from and after July 1, 1999.

§ 41-60-33. Requirements and training for use of automated external defibrillator.

Any person may use an automated external defibrillator for the purpose of saving the life of another person in sudden cardiac death, subject to the following requirements:

(a) A Mississippi licensed physician must exercise medical control authority over the person using the AED to ensure compliance with requirements for training, emergency medical services (EMS) notification and maintenance;

(b) The person using the AED must have received appropriate training in cardiopulmonary resuscitation (CPR) and in the use of an AED by the American Heart Association, American Red Cross, National Safety Council or other nationally recognized course in CPR and AED use;

(c) The AED must not operate in a manual mode except when access control devices are in place or when appropriately licensed individuals such as registered nurses, physicians or emergency medical technician-paramedics utilize the AED; and

(d) Any person who renders emergency care or treatment on a person in sudden cardiac death by using an AED must activate the EMS system as soon as possible, and report any clinical use of the AED to the licensed physician.

SOURCES: Laws, 1999, ch. 489, § 2, eff from and after July 1, 1999.

§ 41-60-35. Individual authorized to use automated external defibrillator not limited from practicing other authorized health occupations.

An individual may use an AED if all of the requirements of Section 41-60-33 are met. However, nothing in Sections 41-60-31 through 41-60-35 shall limit the right of an individual to practice a health occupation that the individual is otherwise authorized to practice under the laws of Mississippi.

SOURCES: Laws, 1999, ch. 489, § 3, eff from and after July 1, 1999.

CHAPTER 61

State Medical Examiner

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|---|----------|
| Mississippi Medical Examiners Act of 1974. [Repealed] | 41-61-1 |
| Mississippi Medical Examiner Act of 1986 | 41-61-51 |

MISSISSIPPI MEDICAL EXAMINERS ACT OF 1974 [REPEALED]

SEC.

41-61-1 through 41-61-21. Repealed.

41-61-23. Repealed.

§§ 41-61-1 through 41-61-21. Repealed.

Repealed by Laws, 1986, ch. 459, § 44, eff from and after July 1, 1986.

§ 41-61-1. [Laws, 1974, ch. 398, § 1]

§ 41-61-3. [Laws, 1974, ch. 398, § 2; Laws, 1976, ch. 437; Laws, 1981, ch. 508, § 2; Laws, 1984, ch. 343, § 3]

§ 41-61-5. [Laws, 1974, ch. 398, § 3; Laws, 1981, ch. 508, § 3]

§ 41-61-7. [Laws, 1974, ch. 398, § 4; Laws, 1981, ch. 508, § 4; Laws, 1984, ch. 343, § 4; Laws, 1984, ch. 495, § 19; Laws, 1985, ch. 474, § 50; Laws, 1986, ch. 438, § 29]

§ 41-61-9. [Laws, 1974, ch. 398, § 5]

§ 41-61-11. [Laws, 1974, ch. 398, § 6; Laws, 1981, ch. 508, § 5]

§ 41-61-13. [Laws, 1974, ch. 398, § 7; Laws, 1981, ch. 508, § 6]

§ 41-61-15. [Laws, 1974, ch. 398, § 8; Laws, 1981, ch. 508, § 7]

§ 41-61-17. [Laws, 1974, ch. 398, § 9]

§ 41-61-19. [Laws, 1974, ch. 398, § 10; Laws, 1981, ch. 508, § 8; Laws, 1984, ch. 343, § 5]

§ 41-61-21. [Laws, 1974, ch. 398, § 11; Laws, 1981, ch. 508, § 9]

Editor's Note — Former § 41-61-1 was the short title for the chapter.

Former § 41-61-3 created the office of state medical examiner, provided for the appointment, and specified the general powers and duties.

Former § 41-61-5 specified the qualifications for the position.

Former § 41-61-7 authorized the medical examiner to acquire office and facilities, to serve on university faculty, to employ assistants, and to obtain liability insurance.

Former § 41-61-9 directed the medical examiner to investigate certain deaths.

Former § 41-61-11 authorized the medical examiner to perform postmortem examination upon certain decedents.

Former § 41-61-13 directed law enforcement officials and others to cooperate with the medical examiner, and specified the jurisdiction of the examiner.

Former § 41-61-15 pertained to records and the issuance of death certificates.

Former § 41-61-17 pertained to the admissibility of records as evidence and the subpoena of person preparing report or record.

Former § 41-61-19 directed the medical examiner to prepare reasonable rules and regulations.

Former § 41-61-21 required every person to report certain deaths and specified penalties for the failure to do so.

Cross References — Mississippi Medical Examiner Act of 1986, see §§ 41-61-51 et seq.

§ 41-61-23. Repealed.

Repealed by Laws, 1984, ch 343, § 6, eff from and after July 1, 1984.
[Laws, 1981, ch. 508, § 1]

Editor's Note — Former § 41-61-23 established the state medical examiner commission.

MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

SEC.

- 41-61-51. Short title.
- 41-61-53. Definitions.
- 41-61-55. State Medical Examiner; appointment; qualifications; removal.
- 41-61-57. County medical examiner; county medical examiner investigator; qualifications; appointment of coroner pro tempore; deputy; removal.
- 41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.
- 41-61-60. Repealed.
- 41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; reports; penalty for violations; transporting body to autopsy facility.
- 41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.
- 41-61-65. Autopsy; reports; immunity from liability; review of determination.
- 41-61-67. Disinterment; costs; petition for order of exhumation.
- 41-61-69. Disposition of body without permission of medical examiner; penalties; disposal of body at sea.
- 41-61-71. Repealed.
- 41-61-73. Repealed.
- 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective June 30, 2011].
- 41-61-77. Central office for Crime Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists; regional medical examiner districts.
- 41-61-79. Radio system; pager/beeper; morgue or morgue facility; photographic equipment; vehicle; costs.

§ 41-61-51. Short title.

Sections 41-61-51 through 41-61-79 shall be known and cited as Mississippi Medical Examiner Act of 1986.

SOURCES: Laws, 1986, ch. 459, § 6, eff from and after July 1, 1986.

Cross References — Mississippi Coroner Reorganization Act of 1986, see §§ 19-21-101 et seq.

Determination of Death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-53. Definitions.

For the purposes of Sections 41-61-51 through 41-61-79, the following definitions shall apply:

(a) "Certification of death" means signing the death certificate.

(b) "Coroner" means the elected county official provided for in Sections 19-21-101 through 19-21-107.

(c) "County medical examiner investigator" means a nonphysician trained and appointed to investigate and certify deaths affecting the public interest.

(d) "County medical examiner" means a licensed physician appointed to investigate and certify deaths affecting the public interest.

(e) "Death affecting the public interest" means any death of a human being where the circumstances are sudden, unexpected, violent, suspicious or unattended.

(f) "Medical examiner" means the State Medical Examiner, county medical examiners and county medical examiner investigators collectively, unless otherwise specified.

(g) "Pronouncement of death" means the statement of opinion that life has ceased for an individual.

(h) "State medical examiner" means the board certified forensic pathologist/physician appointed by the Commissioner of Public Safety to investigate and certify deaths which affect the public interest.

SOURCES: Laws, 1986, ch. 459, § 7, eff from and after July 1, 1986.

Cross References — Reporting of deaths caused by Acquired Immune Deficiency Syndrome (AIDS), § 41-23-1.

Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

§ 41-61-55. State Medical Examiner; appointment; qualifications; removal.

There is hereby created the position of State Medical Examiner, to be established as herein provided under the appointment by and supervision of the Commissioner of Public Safety.

Each applicant for the position of State Medical Examiner shall, as a minimum, be a physician who is eligible for a license to practice medicine in Mississippi and be certified in forensic pathology by the American Board of Pathology.

The State Medical Examiner may be removed by the commissioner only for inefficiency or other good cause, after written notice and a hearing complying with due process of law.

SOURCES: Laws, 1986, ch. 459, § 8, eff from and after July 1, 1986.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Reapplication for office after removal, see § 41-61-57.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-57. County medical examiner; county medical examiner investigator; qualifications; appointment of coroner pro tempore; deputy; removal.

(1) There are hereby created the positions of county medical examiners and county medical examiner investigators, to be established as herein provided through successful completion of the death investigation training school provided for in subsection (5) of this section. Each county medical examiner (CME) shall be a doctor of medicine (M.D.) or osteopathic medicine (D.O.) licensed in the State of Mississippi. Each county medical examiner investigator (CMEI) shall be a nonphysician who shall, as a minimum, possess a high school graduation diploma or its equivalent. Extra consideration for the CMEI position may be given for experience and/or training in health-related fields and medicolegal death investigations.

(2) Each coroner elected in the 1987 general election and thereafter, upon successful completion of the death investigation training school provided for in subsection (5) of this section, shall be recognized as a county medical examiner or county medical examiner investigator, according to the qualifications set out in subsection (1) of this section, and shall be designated the chief for the county in which he was elected. If the elected or appointed coroner fails to successfully complete the death investigation training school, and thus is unable to take the oath of office, as provided in Section 19-21-105, there shall promptly be appointed a coroner pro tempore in the manner prescribed by Section 9-1-27, and that person shall be designated the chief county medical examiner or county medical examiner investigator until the time of the next death investigation training school, which he must successfully complete or be removed from office. Any elected coroner who has failed to successfully complete the death investigation training school may attend any subsequent death investigation training school conducted during the term for which he was elected, and upon the successful completion thereof, he shall become the chief CME or CMEI for the county in which he was elected. The coroner pro

tempore then shall become a deputy CME or CMEI, provided he has successfully completed the death investigation training school. Notwithstanding anything in this section to the contrary, each coroner holding office on July 1, 1986, shall be the chief CME or CMEI for the county in which he was elected through the expiration of his term in January 1988 without having to attend the death investigation training school; however, he may voluntarily attend any such school conducted prior to that time.

(3) There shall be at least one (1) county medical examiner and/or county medical examiner investigator for each county, and one (1) county medical examiner or county medical examiner investigator shall be designated as the chief for each county, except as otherwise provided in subsection (4) of this section. Any county may have deputy county medical examiners or deputy county medical examiner investigators as deemed necessary who shall be appointed jointly by the board of supervisors and the CME or CMEI. However, when the population of a county reaches a total of twenty thousand (20,000) or greater, there shall be one or more officially appointed deputies. Deputies shall be subject to the same qualifications, training and certification requirements, and shall possess the same authority and discharge the same duties, as other county medical examiners or county medical examiner investigators, and shall receive fees and expenses as provided in Sections 41-61-69 and 41-61-75. Any CME or CMEI may be removed by the State Medical Examiner prior to the expiration of his term as CME or CMEI for inefficiency, or other good cause, after written notice and a hearing in compliance with due process law.

(4) One (1) person may serve as the chief CME or CMEI for two (2) or more adjacent counties when that person consents and the boards of supervisors of each county involved and the State Medical Examiner consent in writing. Each respective county involved shall be responsible for payment for the services given to that county by the chief CME or CMEI.

(5) Chief and deputy CME's and CMEI's shall attend the death investigation training school provided by the Mississippi Crime Laboratory and the State Medical Examiner, and shall successfully complete subsequent testing on the subject material by the State Medical Examiner at least once every four (4) years. Room, board and transportation expenses for attending the school shall be borne by the county in which the CME or CMEI is serving. In addition to the above training, the individual shall receive at least twenty-four (24) hours annually of continuing education as prescribed and certified by the State Medical Examiner. If the above requirements for training or continuing education are not met, the individual immediately shall be disqualified and removed from office as CME and/or CMEI. Reapplication for the office may be made the following year after removal.

SOURCES: Laws, 1986, ch. 459, § 9; Laws, 1989, ch. 455, § 3; Laws, 1990, ch. 453, § 1, eff from and after October 1, 1990.

Cross References — Application of this section to coroners elected in the 1987 general election and thereafter, see §§ 19-21-103 and 19-21-105.

Provision that coroners shall be elected in 1995 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Determination of Death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Removal from office generally, see § 41-61-55.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Authority for two or more adjacent counties to establish a regional medical examiner district, see § 41-61-77.

JUDICIAL DECISIONS

1. In general.

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted

the autopsy of the victim was properly permitted to testify. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

ATTORNEY GENERAL OPINIONS

There is no statutory authority for county to employ secretary for county medical examiner. Meadows, Dec. 16, 1992, A.G. Op. #92-0862.

A county board of supervisors cannot unilaterally appoint a deputy county medical examiner investigator after the county medical examiner investigator has been disqualified by the Office of State Medical Examiner; however, as government must continue to operate, until such

time as the office of deputy county medical examiner investigator is properly filled, the board of supervisors may appoint an acting deputy or deputies. Barry, Apr. 5, 2002, A.G. Op. #02-0162.

The board of supervisors in a county with a population of more than 78,000 could appoint more than one deputy county medical examiner investigator. Barry, Apr. 5, 2002, A.G. Op. #02-0162.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Coroners or Medical Examiners §§ 1 et seq.

§ 41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.

(1) A person's death that affects the public interest as specified in subsection (2) of this section shall be promptly reported to the medical examiner by the physician in attendance, any hospital employee, any law enforcement officer having knowledge of the death, the embalmer or other funeral home employee, any emergency medical technician, any relative or any other person present. The appropriate medical examiner shall notify the municipal or state law enforcement agency or sheriff and take charge of the body. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue

donor, the medical examiner's authority over the body shall be subject to the provisions of Section 41-39-15(6). The appropriate medical examiner shall notify the Mississippi Bureau of Narcotics within twenty-four (24) hours of receipt of the body in cases of death as described in subsection (2)(m) or (n) of this section.

(2) A death affecting the public interest includes, but is not limited to, any of the following:

- (a) Violent death, including homicidal, suicidal or accidental death.
- (b) Death caused by thermal, chemical, electrical or radiation injury.
- (c) Death caused by criminal abortion, including self-induced abortion, or abortion related to or by sexual abuse.
- (d) Death related to disease thought to be virulent or contagious that may constitute a public hazard.
- (e) Death that has occurred unexpectedly or from an unexplained cause.
- (f) Death of a person confined in a prison, jail or correctional institution.
- (g) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.
- (h) Death of a person where the body is not claimed by a relative or a friend.
- (i) Death of a person where the identity of the deceased is unknown.
- (j) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.
- (k) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.
- (l) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.
- (m) Death that is caused by drug overdose or which is believed to be caused by drug overdose.

(n) When a stillborn fetus is delivered and the cause of the demise is medically believed to be from the use by the mother of any controlled substance as defined in Section 41-29-105.

(3) The State Medical Examiner is empowered to investigate deaths, under the authority hereinafter conferred, in any and all political subdivisions of the state. The county medical examiners and county medical examiner investigators, while appointed for a specific county, may serve other counties on a regular basis with written authorization by the State Medical Examiner, or may serve other counties on an as-needed basis upon the request of the

ranking officer of the investigating law enforcement agency. The county medical examiner or county medical examiner investigator of any county that has established a regional medical examiner district under subsection (4) of Section 41-61-77 may serve other counties that are parties to the agreement establishing the district, in accordance with the terms of the agreement, and may contract with counties that are not part of the district to provide medical examiner services for those counties. If a death affecting the public interest takes place in a county other than the one where injuries or other substantial causal factors leading to the death have occurred, jurisdiction for investigation of the death may be transferred, by mutual agreement of the respective medical examiners of the counties involved, to the county where the injuries or other substantial causal factors occurred, and the costs of autopsy or other studies necessary to the further investigation of the death shall be borne by the county assuming jurisdiction.

(4) The chief county medical examiner or chief county medical examiner investigator may receive from the county in which he serves a salary of Nine Hundred Dollars (\$900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75, provided that no county shall pay the chief county medical examiner or chief county medical examiner investigator less than One Hundred Dollars (\$100.00) per month as a salary, in addition to other compensation provided by law. In any county having one or more deputy medical examiners or deputy medical examiner investigators, each deputy may receive from the county in which he serves, in the discretion of the board of supervisors, a salary of not more than Nine Hundred Dollars (\$900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75. For this salary the chief shall assure twenty-four-hour daily and readily available death investigators for the county, and shall maintain copies of all medical examiner death investigations for the county for at least the previous five (5) years. He shall coordinate his office and duties and cooperate with the State Medical Examiner, and the State Medical Examiner shall cooperate with him.

(5) A body composed of the State Medical Examiner, whether appointed on a permanent or interim basis, the Director of the State Board of Health or his designee, the Attorney General or his designee, the President of the Mississippi Coroners' Association (or successor organization) or his designee, and a certified pathologist appointed by the Mississippi State Medical Association shall adopt, promulgate, amend and repeal rules and regulations as may be deemed necessary by them from time to time for the proper enforcement, interpretation and administration of Sections 41-61-51 through 41-61-79, in accordance with the provisions of the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq.

SOURCES: Laws, 1986, ch. 459, § 10; Laws, 1987, ch. 504; Laws, 1989, ch. 455, § 2; Laws, 1990, ch. 453, § 2; Laws, 1991, ch. 591, § 1; Laws, 1993, ch. 411, § 1; Laws, 1998, ch. 567, § 1; Laws, 2003, ch. 548, § 1; Laws, 2004, ch. 505, § 5; Laws, 2005, ch. 472, § 3, eff from and after July 1, 2005.

Editor's Note — On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 567, § 1.

Laws of 2005, ch. 472, § 1 provides as follows:

“SECTION 1. This act shall be known and may be cited as the “Lindsay Miller — Beth Finch Organ Recovery Act.”

Section 41-39-15, referred to in (1), was repealed by Laws, 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions, see 41-39-101 et seq.

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Reports concerning deaths caused by motor vehicle accidents, see § 63-3-419.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in denying an autopsy where the decedent's death was a violent one, and which affected the public interest such that a coroner's decision to order an autopsy was proper. *Sanders v. Estate of Chamblee*, 819 So. 2d 1275 (Miss. 2002).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted

the autopsy of the victim was properly permitted to testify. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

The county medical examiner ordered an autopsy on a passenger who died in a car wreck, especially in light of the public interest in prosecuting driver for a felony charge against him arising out of the accident. *Hopson ex rel. Hopson v. Meredith*, 719 So. 2d 1176 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the public interest, pursuant to Section 41-61-59(1). See also, Section 41-61-61(1). *Houston*, February 16, 1995, A.G. Op. #95-0090.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). *Houston*, February 16, 1995, A.G. Op. #95-0090.

Based upon Section 41-61-59(3), jurisdiction to investigate a death is transferred from one county to another county only if there is a mutual agreement be-

tween the county medical examiners involved. If the medical examiners cannot reach an agreement to transfer jurisdiction, then the county where the death occurred retains jurisdiction to investigate the death. *Gurley*, December 20, 1996, A.G. Op. #96-0858.

Jurisdiction to investigate a death is transferred from one county to another only if there is a mutual agreement between the county medical examiners involved and, if they cannot reach an agreement, the county where the death occurred retains jurisdiction to investigate the death; thus, an examiner may store a dead body in a hospital morgue in another county and still retain jurisdiction over the body, but the examiner for the county where the dead body is stored may not obtain jurisdiction over the body merely because the body is being stored at a morgue in his county. *Oliver*, January 30, 1998, A.G. Op. #98-0034.

The statute requires a sheriff or any law enforcement officer having knowledge of a death that affects the public interest to notify the county medical examiner/coroner so that the coroner may take charge of the body. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified. Gowan, Oct. 11, 2002, A.G. Op. #02-0577.

If a patient in a nursing home dies under any of the circumstances listed in this section or under similarly related circumstances, the county medical examiner must be notified and, pursuant to

§ 41-61-63(2)(a), a medical examiner has the authority to inspect and copy the medical records of a decedent whose death is under investigation. Hedgepeth, Oct. 11, 2002, A.G. Op. #02-0579.

No authority is found that prohibits a funeral home director from notifying anyone else about a suspicious death so long as the medical examiner is promptly notified. Thomason, Oct. 29, 2004, A.G. Op. 04-0504.

No criminal statute is known that prohibits photographing a deceased body by anyone at a time when a funeral home removes a body from the place of death and there is a question of suspicion of foul play. Thomason, Oct. 29, 2004, A.G. Op. 04-0504.

RESEARCH REFERENCES

ALR. Insurance: coroner's verdict or report as evidence on issue of suicide. 28 A.L.R.2d 352.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Necessity and effect, in homicide prosecution, of expert medical testimony as to cause of death. 65 A.L.R.3d 283.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-60. Repealed.

Repealed by Laws, 1998, § 3, eff from and after October 1, 1998.

[Laws, 1993, ch. 550, § 9, eff from and after May 27, 1993]

Editor's Note — On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 1998, ch. 567, § 3.

§ 41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; reports; penalty for violations; transporting body to autopsy facility.

(1) Upon the death of any person where that death affects the public interest, the medical examiner of the county in which the body of the deceased is found or, if death occurs in a moving conveyance, where the conveyance stops and death is pronounced, shall be notified promptly by any person having knowledge or suspicion of such a death, as provided in subsection (1) of Section 41-61-59. No person shall disturb the body at the scene of such a death until authorized by the medical examiner, unless the medical examiner is unavailable and it is determined by an appropriate law enforcement officer that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this section,

expression of an opinion that death has occurred may be made by a nurse, an emergency medical technician, or any other competent person, in the absence of a physician.

(2) The discovery of anatomical material suspected of being part of the human body shall be promptly reported to the medical examiner of the county in which the material is found, or to the State Medical Examiner.

(3) A person who willfully moves, distributes or conceals a body or body part in violation of this section is guilty of a misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

(4) Upon oral or written authorization of the medical examiner, if an autopsy is to be performed, the body shall be transported directly to an autopsy facility in a suitable secure conveyance, and the expenses of transportation shall be paid by the county for which the service is provided. The county may contract with individuals or make available a vehicle to the medical examiner or law enforcement personnel for transportation of bodies.

SOURCES: Laws, 1986, ch. 459, § 11, eff from and after July 1, 1986.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted

the autopsy of the victim was properly permitted to testify. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

ATTORNEY GENERAL OPINIONS

Board of Supervisors merely has option to either contract with individual other than County Medical Examiner Investigator to transport bodies in question or county may make vehicle available to County Medical Examiner Investigator or law enforcement for purpose of transporting bodies; statute does not grant Board of Supervisors authority to enter into contract with County Medical Examiner Investigator. Leeth, March 28, 1990, A.G. Op. #90-0198.

If no law enforcement officer is available, coroners as death investigators may

seize and preserve evidence in furtherance of death investigation; coroners should carefully mark and maintain evidence of custody over illegal narcotics so seized until it can be turned over to proper law enforcement officers. Illegal narcotics may not be ordered destroyed by the coroner but should be turned over to proper law enforcement authority. *Dukes*, Oct. 22, 1992, A.G. Op. #92-0721.

Under Miss. Code Section 41-61-61(4), coroner/county medical examiner investigator has authority to cause to be removed bodies which are to be autopsied, and

county is obligated to pay expenses of such removal; however, county may contract with individuals or make available to medical examiner or law enforcement personnel vehicle for transportation of bodies. Jones, Mar. 31, 1993, A.G. Op. #93-0044.

A crime scene never falls under the jurisdiction of the county medical examiner. However, the county medical examiner does have authority over a body at a crime scene where the death affects the public interest, pursuant to Section 41-61-59(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Under Section 41-61-61(1), the medical examiner of the county must be contacted promptly and with limited exception has

exclusive jurisdiction over the body while it is at the crime scene, up and until the body is released to a law enforcement agency as directed by Section 41-61-59(1). Houston, February 16, 1995, A.G. Op. #95-0090.

Section 41-61-61 provides that the county should pay the expenses for the transportation of a body if an autopsy is to be performed. However, the statutes are silent as to transportation of bodies when no autopsy is to be performed. Hemphill, August 30, 1996, A.G. Op. #96-0586.

The discovery of any human bones should promptly be reported to the county medical examiner or the State Medical Examiner. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

RESEARCH REFERENCES

ALR. Insurance: coroner's verdict or report as evidence on issue of suicide. 28 A.L.R.2d 352.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.

(1) The State Medical Examiner shall:

(a) Provide assistance, consultation and training to county medical examiners, county medical examiner investigators and law enforcement officials.

(b) Keep complete records of all relevant information concerning deaths or crimes requiring investigation by the medical examiners.

(c) Promulgate rules and regulations regarding the manner and techniques to be employed while conducting autopsies; the nature, character and extent of investigations to be made into deaths affecting the public interest to allow a medical examiner to render a full and complete analysis and report; the format and matters to be contained in all reports rendered by the medical examiners; and all other things necessary to carry out the purposes of Sections 41-61-51 through 41-61-79. The State Medical Examiner shall make such amendments to these rules and regulations as may be necessary. All medical examiners, coroners and law enforcement officers shall be subject to such rules.

(d) Cooperate with the crime detection and medical examiner laboratories authorized by Section 45-1-17, the University of Mississippi Medical

Center, the Attorney General, law enforcement agencies, the courts and the State of Mississippi.

(2) In addition, the medical examiners shall:

(a) Upon receipt of notification of a death affecting the public interest, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the State Medical Examiner on forms prescribed for that purpose. The medical examiner shall be authorized to inspect and copy the medical reports of the decedent whose death is under investigation. However, the records copied shall be maintained as confidential so as to protect the doctor/patient privilege. The medical examiners shall be authorized to request the issuance of subpoenas, through the proper court, for the attendance of persons and for the production of documents as may be required by their investigation.

(b) Complete the medical examiner's portion of the certificate of death within seventy-two (72) hours of assuming jurisdiction over a death, and forward the certificate to the funeral director or to the family. The medical examiner's portion of the certificate of death shall include the decedent's name, the date and time of death, the cause of death and the certifier's signature. If determination of the cause and/or manner of death are pending an autopsy or toxicological or other studies, these sections on the certificate may be marked "pending," with amendment and completion to follow the completion of the postmortem studies. The State Medical Examiner shall be authorized to amend a death certificate; however, the State Medical Examiner is not authorized to change or amend any death certificate after he has resigned or been removed from his office as the State Medical Examiner. Where an attending physician refuses to sign a certificate of death, or in case of any death, the State Medical Examiner or properly qualified designee may sign the death certificate.

(c) Cooperate with other agencies as provided for the State Medical Examiner in subsection (1)(d) of this section.

(d) In all investigations of deaths affecting the public interest where an autopsy will not be performed, obtain or attempt to obtain postmortem blood, urine and/or vitreous fluids. Medical examiners may also obtain rectal temperature measurements, known hair samples, radiographs, gunshot residue/wiping studies, fingerprints, palm prints and other noninvasive studies as the case warrants and/or as directed by the State Medical Examiner. Decisions may be made in consultation with investigating law enforcement officials and/or the State Medical Examiner. The cost of all studies not performed by the Mississippi Crime Laboratory shall be borne by the county. County medical examiner investigators shall be authorized to obtain these postmortem specimens themselves following successful completion of the death investigation training school.

(e) In all investigations of deaths occurring in the manner specified in subsection (2)(j) of Section 41-61-59, a death investigation shall be performed by the medical examiners in accordance with the child death investigation protocol established by the State Medical Examiner. The

results of the death investigation shall be reported to the State Medical Examiner on forms prescribed for that purpose by the State Medical Examiner and to appropriate authorities, including police and child protective services, within three (3) days of the conclusion of the death investigation.

(3) The medical examiner shall not use his position or authority to favor any particular funeral home or funeral homes.

SOURCES: Laws, 1986, ch. 459, § 12; Laws, 1987, ch. 483, § 30; Laws, 1988, ch. 442, § 27; Laws, 1989, ch. 537, § 26; Laws, 1990, ch. 518, § 27; Laws, 1991, ch. 618, § 26; Laws, 1992, ch. 491 § 28; Laws, 1996, ch. 485, § 1; Laws, 2003, ch. 383, § 1, eff from and after July 1, 2003.

Cross References — Determination of death, see §§ 41-36-1 et seq.
Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Duty of the State Medical Examiner to investigate a death of a person on the premises of a correctional system, see § 47-5-151.

JUDICIAL DECISIONS

1. In general.

Only purpose for taking the bodily fluids was to help determine the cause of death; there was no prosecutorial purpose mentioned, and the record was devoid of any conceivable postmortem privacy in-

terest the decedent could have which outweighed the public interest in determining the circumstances surrounding the decedent's accidental death. *Sanders v. Estate of Chamblee*, 819 So. 2d 1275 (Miss. 2002).

ATTORNEY GENERAL OPINIONS

State Department of Health/HIV/AIDS Prevention Program must provide state Medical Examiner's Office with medical information regarding whether or not victims who die and fall under Examiner's jurisdiction for investigation and certification, are HIV carriers or suspected HIV carriers. Dayton, Sept. 10, 1992, A.G. Op. #92-0651.

Under Miss. Code Section 41-61-63(2)(a), medical examiner is authorized to inspect and copy medical reports of decedent whose death is under investigation, with such authority encompassing cases of deaths affecting public interest as defined by Miss. Code Section 41-61-59. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

"Medical reports" under Miss. Code Section 41-61-63 include any reports or other documents supplied by hospital, doctor, nurse or other health professional, who

has had contact with patient, but do not include summations or other reports prepared by Department of Health personnel. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

Miss. Code Section 41-61-63(2)(a) authorizes medical examiners to request issuance of subpoenas, through proper court, for production of documents as may be required by their investigation; therefore, documents not accessible as "medical reports" could be obtained by medical examiners upon showing to court that such documents were required in investigations. Cobb, Jan. 4, 1993, A.G. Op. #92-0838.

Medical form which includes reportable diseases is not "medical record" within meaning of Miss. Code Section 41-61-63, and is, therefore, not available to medical examiners without subpoena issued by proper court. Thompson, Feb. 25, 1993, A.G. Op. #93-0084.

Medical examiner is authorized to obtain medical records of deceased from treating physician or hospital without necessity of subpoena, but medical examiner investigator may obtain subpoena to compel production of medical records. Mullins, Feb. 24, 1994, A.G. Op. #93-0947.

A county medical examiner only has the responsibility of completing the death certificate after assuming jurisdiction over a death. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

RESEARCH REFERENCES

ALR. Official death certificate as evidence of cause of death in civil or criminal action. 21 A.L.R.3d 418.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-65. Autopsy; reports; immunity from liability; review of determination.

(1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner or by a competent pathologist designated by the State Medical Examiner. The State Medical Examiner or designated pathologist may retain any tissues as needed for further postmortem studies or documentation. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the State Medical Examiner or designated pathologist may retain any biopsy or medically approved sample of the organ and/or tissue in accordance with the provisions of Section 41-39-15(6). A complete autopsy report of findings and interpretations, prepared on forms designated for this purpose, shall be submitted promptly to the State Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, district attorney and court clerk. A copy of the report shall be furnished to one (1) adult member of the immediate family of the deceased or the legal representative or legal guardian of members of the immediate family of the deceased upon request. In determining the need for an autopsy, the medical examiner may consider the request from the district attorney or county prosecuting attorney, law enforcement or other public officials or private persons. However, if the death occurred in the manner specified in subsection (2)(j) of Section 41-61-59, an autopsy shall be performed by the State Medical Examiner or his designated pathologist, and the report of findings shall be forwarded promptly to the State Medical Examiner, investigating medical examiner, the State Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51

through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he may petition the circuit court, which may, in its discretion, hold a formal hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petitioning and hearing shall be borne by the petitioner.

SOURCES: Laws, 1986, ch. 459, § 13; Laws, 1990, ch. 484, § 1; Laws, 2002, ch. 424, § 2; Laws, 2003, ch. 383, § 2; Laws, 2005, ch. 472, § 4, eff from and after July 1, 2005.

Editor's Note — Laws of 2005, ch. 472, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the "Lindsay Miller — Beth Finch Organ Recovery Act."

Section 41-39-15, referred to in (1), was repealed by Laws of 2008, ch. 561, § 26, effective from and after July 1, 2008. For present similar provisions, see §§ 41-39-101 et seq.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Corrections and amendments to death certificates, see § 41-57-13.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Fees of a pathologist performing an autopsy, see § 41-61-75.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction.

1. In general.

Legislature did not intend that a deceased person's burial be delayed indefinitely while his next-of-kin pursued administrative hearings with a state agency; among the factors which might justify a pulling away from the requirement of exhaustion was one where the expense and awkwardness of the administrative proceedings as compared with inexpensive and efficient judicial disposition of the controversy. *Sanders v. Estate of Chamblee*, 819 So. 2d 1275 (Miss. 2002).

The defendant in a murder prosecution lacked standing to challenge technical compliance with autopsy procedure and, therefore, the physician who conducted the autopsy of the victim was properly

permitted to testify. *Evans v. State*, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

Statutory immunity of § 41-61-65(2) does not extend to alleged abuse of process by assistant state medical examiner because immunity does not extend to intentional torts, therefore assistant medical examiner's claim that he was fraudulently joined as defendant to preclude removal to federal court on basis of diversity jurisdiction was unfounded. *Laughlin v. Prudential Ins. Co.*, 882 F.2d 187 (5th Cir. 1989).

2. Jurisdiction.

The circuit court has jurisdiction over family members' petitions from the county medical examiner's decision to perform an autopsy. *Hopson ex rel. Hopson v. Meredith*, 719 So. 2d 1176 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

Only state medical examiner or designated pathologist may perform autopsies for state or county. Miller, Oct. 21, 1992, A.G. Op. #92-0784.

Pursuant to Section 41-61-65(1) the State Medical Examiner has discretion in releasing or transferring any tissues from autopsies that are on file with the State Medical Examiner's Office. Head, May 9, 1996, A.G. Op. #96-0290.

The statute gave the State Medical Examiner the authority to enter into a research project as proposed in a letter. Head, November 25, 1998, A.G. Op. #98-0713.

There is no statutory provision prohibiting the release of autopsy findings to a facility of the Department of Mental Health, in whose custody the patient died. Hendrix, Apr. 23, 2004, A.G. Op. 04-0161.

RESEARCH REFERENCES

ALR. Time for making autopsy or demand therefor under insurance policy. 30 A.L.R.2d 837.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

Am Jur. 23 Am. Jur. 2d, Depositions and Discovery § 271.

5A Am. Jur. Legal Forms 2d, Coroners and Medical Examiners, § 73:14 (request to have autopsy performed — indemnification of authorized officer).

5A Am. Jur. Legal Forms 2d, Coroners and Medical Examiners, § 73:17 (report of inquest by coroner's or medical examiner's jury).

7 Am. Jur. Legal Forms 2d, Dead Bodies, § 84:64 (authorization for autopsy).

2 Am. Jur. Proof of Facts, Autopsy, Proof No. 1 (complete autopsy — death due to spinal concussion — testimony of physician (pathologist)).

12 Am. Jur. Proof of Facts, Suicide Proof No. 2 (death by suicide — testimony of autopsy surgeon).

§ 41-61-67. Disinterment; costs; petition for order of exhumation.

(1) In any case of death where the body is or has been buried without investigation by a medical examiner as to the cause and manner of death, or where sufficient cause develops for further investigation after a body has been buried as determined by a medical examiner, the State Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the circuit court having jurisdiction of the matter and petition the court for disinterment. The circuit judge may order that the body be exhumed and that an autopsy be performed by the State Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. However, in cases of suspected homicide, the State Medical Examiner shall be able to authorize disinterment for the purposes of autopsy. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the county for which the service is provided.

(2) Any person may petition the circuit court for an order of exhumation. Upon a showing of sufficient cause, the court may order the body exhumed. The cost incurred shall be assigned to the petitioner.

SOURCES: Laws, 1986, ch. 459, § 14, eff from and after July 1, 1986.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

JUDICIAL DECISIONS

1. Illustrative cases.

In a murder trial, defense counsel was provided with autopsy photos, blood and urine samples, and the gunshot residue kit. Further, after a first motion was held in abeyance, defendant failed to renew defendant's motion to exhume the victim's

body in order for the body to be examined by an independent expert of defendant's choosing; based on the record, defendant's petition failed to sufficiently show cause for an exhumation. *Ross v. State*, 883 So. 2d 1181 (Miss. Ct. App. 2004), cert. denied, 883 So. 2d 1180 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

State Medical Examiner may authorize exhumation of body without court order in cases of suspected homicide for purpose of autopsy but where district attorney has petitioned circuit court for order allowing

body to be disinterred and circuit judge has denied that petition in written order, authority of State Medical Examiner in matter would cease. *Walker*, June 16, 1993, A.G. Op. #93-0361.

RESEARCH REFERENCES

ALR. Removal and reinterment of remains. 21 A.L.R.2d 472.

Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. 21 A.L.R.2d 538.

Reviewing, setting aside, or quashing of verdict at coroner's inquest. 78 A.L.R.2d 1218.

Disinterment in criminal cases. 63 A.L.R.3d 1294.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

Am Jur. 22A Am. Jur. 2d, Dead Bodies §§ 50, 54. 56-58, 75.

§ 41-61-69. Disposition of body without permission of medical examiner; penalties; disposal of body at sea.

(1) No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner shall embalm, bury or cremate the body without the permission of the medical examiner. Any person violating the provisions of this section shall be guilty of a misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

(2) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has been informed of or inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than twenty-four (24) hours after birth or to death of patient resulting only from natural disease and occurring in a licensed hospital unless the death falls

within the jurisdiction of the medical examiner. The State Medical Examiner shall be authorized to adopt rules creating additional exceptions to this subsection. For making this certification, the medical examiner or his deputy shall be entitled to charge a fee of Twenty-five Dollars (\$25.00), to be paid by the applicant, unless such medical examiner or his deputy has filed a written report of such death as provided in Section 41-61-73, Mississippi Code of 1972, and received a fee therefor paid by the county.

SOURCES: Laws, 1986, ch. 459, § 15; Laws, 1990, ch. 453, § 3; Laws, 1993, ch. 411, § 2, eff from and after July 1, 1993.

Editor's Note — Section 41-61-73, referred to in (2), was repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Disposition of human bodies or parts, see §§ 41-39-1 et seq.

Application of this section to a deputy, see § 41-61-57.

Right of the chief medical examiner or chief county medical examiner investigator to receive a salary in addition to the fees specified in this section, see § 41-61-59.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The statute only applies if a body has been embalmed, buried, or cremated without the permission of the county medical

examiner and the death is one under his jurisdiction. Peeler, Jan. 28, 2000, A.G. Op. #2000-0002.

RESEARCH REFERENCES

ALR. Liability in damages for withholding corpse from relatives. 48 A.L.R.3d 240.

Liability for wrongful autopsy. 18 A.L.R.4th 858.

Homicide: cremation of victim's body as violation of accused's rights. 70 A.L.R.4th 1091.

§ 41-61-71. Repealed.

Repealed by Laws, 2005, ch. 472, § 6, effective from and after July 1, 2005.
[Laws, 1986, ch. 459, § 16, eff from and after July 1, 1986.]

Editor's Note — Laws of 2005, ch. 472, § 1 provides as follows:

“SECTION 1. This act shall be known and may be cited as the “Lindsay Miller — Beth Finch Organ Recovery Act.”

Former § 41-61-71 set forth a procedure for obtaining corneal tissue, pituitary glands and other tissues from decedent for transplant utilization and for receiving consent from next of kin.

§ 41-61-73. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.
[Laws, 1986, ch. 459, § 17; 1990, ch. 453, § 4]

Editor's Note — Former Section 41-61-73 provided for the confidentiality of certain reports of investigations, examinations and autopsies, prescribed who could have access to such reports, specified penalties for violations, provided for their admissibility into evidence, and excluded certain of these reports from Public Records Act.

§ 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective June 30, 2011].

(1) For each investigation with the preparation and submission of the required reports, the following fees shall be billed to and paid by the county for which the service is provided:

(a) A medical examiner or his deputy shall receive One Hundred Twenty-five Dollars (\$125.00) for each completed report of investigation of death, plus the examiner's actual expenses. In addition to that fee, in cases where the cause of death was sudden infant death syndrome (SIDS) and the medical examiner provides a SIDS Death Scene Investigation report, the medical examiner shall receive for completing that report an additional Fifty Dollars (\$50.00), or an additional One Hundred Dollars (\$100.00) if the medical examiner has received advanced training in child death investigations and presents to the county a certificate of completion of that advanced training. The State Medical Examiner shall develop and prescribe a uniform format and list of matters to be contained in SIDS/Child Death Scene Investigation reports, which shall be used by all county medical examiners and county medical examiner investigators in the state.

(b) The pathologist performing autopsies as provided in Section 41-61-65 shall receive One Thousand Dollars (\$1,000.00) per completed autopsy, plus mileage expenses to and from the site of the autopsy, and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars (\$100.00) per autopsy.

(2) Any medical examiner, physician or pathologist who is subpoenaed for appearance and testimony before a grand jury, courtroom trial or deposition shall be entitled to an expert witness hourly fee to be set by the court and mileage expenses to and from the site of the testimony, and such amount shall be paid by the jurisdiction or party issuing the subpoena.

SOURCES: Laws, 1986, ch. 459, § 18; Laws, 1990, ch. 453, § 5; Laws, 1991, ch. 591, § 2; Laws, 1993, ch. 411, § 3; Laws, 1998, ch. 567, § 2; Laws, 2007, ch. 367, § 1; Laws, 2008, ch. 362, § 1, eff July 15, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 567, § 2.

Laws of 2007, ch. 367, § 2 provides as follows:

“SECTION 2. This act shall take effect and be in force from and after October 1, 2007, and this act shall stand repealed on June 30, 2011.”

On July 15, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2008, ch. 362, § 1.

Amendment Notes — The 2007 amendment, added the last two sentences in (1)(a).

The 2008 amendment, substituted “One Hundred Twenty-five Dollars (\$125.00)” for “Eighty-five Dollars (\$85.00)” in the first sentence of (1)(a); and in (1)(b), substituted “One Thousand Dollars (\$ 1,000.00)” for “Five Hundred Fifty Dollars (\$550.00)” and added “and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars (\$100.00) per autopsy” to the end.

Cross References — Right of a deputy to receive fees under the provisions of this section, see § 41-61-57.

Right of the chief medical examiner or chief county medical examiner investigator to receive a salary in addition to the fees specified in this section, see § 41-61-59.

Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

ATTORNEY GENERAL OPINIONS

Section 41-61-75 allows for a medical examiner to receive payment for mileage reasonably incurred as a direct result of an investigation of a death. Meredith, December 6, 1996, A.G. Op. #96-0828.

The payments provided for in subsection (1) are “direct payments for services

rendered” by the coroner to the county, and the board of supervisors is authorized to pay the matching employer’s contributions out of county general funds. Robinson, Feb, 9, 2001, A.G. Op. #2000-9658.

RESEARCH REFERENCES

ALR. Necessity and effect, in homicide prosecution, of expert medical testimony as to cause of death. 65 A.L.R.3d 283.

Admissibility of expert or opinion testimony concerning identification of skeletal remains. 18 A.L.R.4th 1294.

Am Jur. 31A Am. Jur. 2d, Expert and Opinion Evidence §§ 195, 196, 206, 208, 210.

§ 41-61-77. Central office for Crime Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists; regional medical examiner districts.

(1) The Department of Public Safety shall establish and maintain a central office for the Mississippi Crime Laboratory and the State Medical Examiner with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the department for the proper management of postmortem examinations.

The facilities of the central and district offices and their staff services may be available to the medical examiners and designated pathologists in their investigations.

(2) In order to provide proper facilities for investigating deaths as authorized in Sections 41-61-51 through 41-61-79, the State Medical Examiner may arrange for the use of existing public or private laboratory facilities. The State Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies, studies and investigations not inconsistent with other applicable laws. Such laboratory facilities may be located at the University of Mississippi Medical Center or any other suitable location. The State Medical Examiner may also serve as a member of the faculty at the University of Mississippi Medical Center and other institutions of higher learning. He shall be authorized to employ, with the approval of the Commissioner of Public Safety, such additional scientific, technical, administrative and clerical assistants as are necessary for performance of his duties. Such employees in the office of the State Medical Examiner shall be subject to the rules, regulations and policies of the state personnel system in their employment.

(3) The State Medical Examiner shall be authorized to appoint and/or employ qualified pathologists as additional associate and assistant state medical examiners as are necessary to carry out the duties of his office. The associate and assistant state medical examiners shall be licensed to practice medicine in Mississippi and, insofar as practicable, shall be trained in the field of forensic pathology. The State Medical Examiner may delegate specific duties to competent and qualified medical examiners within the scope of the express authority granted to him by law or regulation. Employees of the office of the State Medical Examiner shall have the authority to enter any political subdivisions of this state for the purpose of carrying out medical investigations.

(4) The board of supervisors of any two (2) or more adjacent counties may enter into written agreements with one another, in accordance with Section 17-13-1 et seq., to establish regional medical examiner districts for the purposes of providing and coordinating medical examiner services on a regional basis, establishing central forensic facilities for the counties involved, and employing or contracting with one or more pathologists to serve as medical examiners of the district, who will perform postmortem examinations and autopsies for the counties involved. Any powers which may be exercised under this chapter by an individual county, county medical examiner or county medical examiner investigator may be exercised jointly with any other county or with the county medical examiner or county medical examiner investigator of such other county, in accordance with the terms of the agreement between the counties involved. Any county entering into such an agreement shall be authorized to expend any funds necessary to carry out the purposes of such agreement. Any municipality located within any such district is hereby authorized and empowered to contribute funds to such district. For any such district established, the counties involved shall attempt to coordinate the

operation of the district and any district facilities with the operation of any district office or offices established by the State Medical Examiner under subsection (1) of this section which include such counties. The medical examiners authorized in this subsection shall have the same authority within a medical examiner district and the counties served by such district as does the State Medical Examiner.

SOURCES: Laws, 1986, ch. 459, § 19; Laws, 1989, ch. 455, § 1, eff from and after July 1, 1989.

Cross References — Determination of death, see §§ 41-36-1 et seq.

Autopsies, see §§ 41-37-1 et seq.

Authority for regional county medical examiner to serve other counties which are parties to the regional agreement and to contract with counties not a party to the agreement, see § 41-61-59.

ATTORNEY GENERAL OPINIONS

Whenever studies appear to be necessary, State Medical Examiner should be contacted and facilities of State which are available should be utilized to fullest extent possible; if any additional experts outside State Medical Examiner's office are required to do special scientific studies, such experts should be engaged and contracted with, by or under direction of State Medical Examiner; expense of any "extra" work would be in addition to \$400.00 paid pursuant to statute. West, April 20, 1990, A.G. Op. #90-0235.

The statute authorizes the State Medical Examiner's Office to allow designated state pathologists to utilize the state morgue facility for postmortem examinations and investigations; although there is no authority for the State Medical Examiner's Office to charge a fee for such use, it may require reimbursement of the costs of using the facility, equipment, and supplies. Howell, April 14, 2000, A.G. Op. #2000-0196.

RESEARCH REFERENCES

ALR. Liability for wrongful autopsy. 18 A.L.R.4th 858.

§ 41-61-79. Radio system; pager/beeper; morgue or morgue facility; photographic equipment; vehicle; costs.

(1) The county medical examiner, county medical examiner investigator or deputies thereof may be furnished by the board of supervisors of the county:

(a) A two-way radio for countywide communication, using similar frequencies to those used by the sheriff. The responsibility for the installation, maintenance and removal of such equipment may be vested in the sheriff by the board of supervisors.

(b) A pager/beeper which can be employed countywide.

(c) A morgue or morgue facilities with proper examination equipment as directed by the State Medical Examiner. The facility may be at a hospital, funeral home or other suitable location. The county may contract with an individual or establishment to provide these facilities.

(d) A camera suitable for crime-scene or death-scene photography, plus film and processing.

(e) Body bags and cloth sheets, as needed.

(2) The county medical examiner or county medical examiner investigator may be furnished by the board of supervisors of the county with:

(a) A vehicle.

(b) Any other equipment, facilities or personnel deemed necessary by the medical examiners and by the board of supervisors of that county.

(3) The vehicle used by a medical examiner in the performance of his duties shall be considered to be an emergency vehicle and may be equipped with standard emergency flashing lights, siren and a two-way radio for countywide communication, using similar frequencies to those used by the County Emergency Communications District.

(4) The costs of any equipment or facilities purchased and the compensation of any persons employed under the authority of this section shall be paid from the general county fund or any other funds which may be made available to the board of supervisors for such purchases or employment of personnel.

SOURCES: Laws, 1986, ch. 459, § 20; Laws, 1990, ch. 453, § 6; Laws, 2009, ch. 432, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment in (3), inserted “standard” preceding “emergency flashing lights, siren” and added “and a two-way radio for countywide communication, using similar frequencies to those used by the County Emergency Communications District” thereafter.

Cross References — Adoption, promulgation, amending, and repealing of rules and regulations applicable to this section, see § 41-61-59.

ATTORNEY GENERAL OPINIONS

Board of supervisors is allowed to compensate individual or establishment for use of their facilities when said facilities

are used in conducting of autopsies. Yeager, Oct. 3, 1990, A.G. Op. #90-0704.

CHAPTER 63

Evaluation and Review of Professional Health Services Providers

SEC.

- 41-63-1. Definitions.
- 41-63-3. Authority to establish medical or dental review committees; purposes of committees; certain medical and dental information may be furnished for evaluation and improvement of quality and efficiency of medical or dental care.
- 41-63-4. Department of Health to design and establish registry program of the condition and treatment of persons seeking medical care; rules, regulations and procedures governing program; State Health Data Advisory Committee established; types of information provided to registry; confidentiality of information; penalties for knowing or negligent release of data in violation of this section; penalties for failure to provide data; fees and charges.
- 41-63-5. Immunity from liability of furnishers of medical or dental information and of members of review committees for action taken.
- 41-63-7. Confidentiality of names of patients studied.
- 41-63-9. Discoverability and admissibility into evidence of proceedings and records of review committees.
- 41-63-21. Accreditation and quality assurance materials of health-care organizations; definition; confidentiality of materials generally.
- 41-63-23. Accreditation and quality assurance materials of health-care organizations; discovery or introduction into evidence in civil actions; admissibility of testimony relating to preparation, evaluation or review of materials; admissibility of documents from original sources.
- 41-63-25. Accreditation and quality assurance materials of health-care organizations; use of materials in proceedings relating to restriction or revocation of physician's license.
- 41-63-27. Construction of Sections 41-63-21 through 41-63-29 with Mississippi Rules of Civil Procedure and Evidence.
- 41-63-29. Effect and purpose of Sections 41-63-21 through 41-63-29.

§ 41-63-1. Definitions.

(1) The terms "medical or dental review committee" or "committee," when used in this chapter, shall mean a committee of a state or local professional medical, nursing, pharmacy or dental society or a licensed hospital, nursing home or other health-care facility, or of a medical, nursing, pharmacy or dental staff or a licensed hospital, nursing home or other health-care facility or of a medical care foundation or health maintenance organization, preferred provider organization, individual practice association, any ambulance service or other prehospital emergency response agency, or any trauma improvement committee established at a licensed hospital designated as a trauma care facility by the Mississippi State Department of Health, Emergency Medical Services program, or any regional or state committee designated by the Mississippi State Department of Health, Emergency Medical Services program, and which participates in the trauma care system, or similar entity, the function of which, or one (1) of the functions of which, is to evaluate and improve the quality of health care rendered by providers of health-care service,

to evaluate the competence or practice of physicians or other health-care practitioners, or to determine that health-care services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health-care services in the area and includes a committee functioning as a utilization review committee, a utilization or quality control peer review organization, or a similar committee or a committee of similar purpose, and the governing body of any licensed hospital while considering a recommendation or decision concerning a physician's competence, conduct, staff membership or clinical privileges.

(2) The term "proceedings" means all reviews, meetings, conversations, and communications of any medical or dental review committee.

(3) The term "records" shall mean any and all committee minutes, transcripts, applications, correspondence, incident reports, and other documents created, received or reviewed by or for any medical or dental review committee.

SOURCES: Laws, 1977, ch. 346, § 1; Laws, 1984, ch. 464, § 1; Laws, 1994, ch. 524, § 1; Laws, 1998, ch. 429, § 6; Laws, 2006, ch. 394, § 1, eff from and after July 1, 2006.

§ 41-63-3. Authority to establish medical or dental review committees; purposes of committees; certain medical and dental information may be furnished for evaluation and improvement of quality and efficiency of medical or dental care.

(1) Any hospital, medical staff, state or local professional medical, pharmacy or dental society, nursing home, health maintenance organization, medical care foundation, preferred provider organization or other health-care facility is authorized to establish medical or dental review committees one of the purposes of which may be to evaluate or review the diagnosis or treatment or the performance or rendition of medical or hospital services, to evaluate or improve the quality of health care rendered by providers of health-care service, to determine that health-care services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable under the circumstances.

(2) Any person, professional group, hospital, sanatorium, extended care facility, skilled nursing home, intermediate care facility or other health-care facility or organization may provide medical or dental information, reports or other data relating to the condition and treatment of any person to the Mississippi Hospital Association, Mississippi State Medical Association, Mississippi Medical and Surgical Association, Mississippi Dental Association, Mississippi State Pharmaceutical Association, Division of Medicaid, any allied medical or dental organization or any duly authorized medical or dental review committee, to be used in the evaluation and improvement of the quality and efficiency of medical or dental care provided in such medical, dental or

health-care facility, including care rendered at the private office of a physician or dentist. Such data and records shall not divulge the identity of any patient.

SOURCES: Laws, 1977, ch. 346, § 2; Laws, 1984, ch. 464, § 2; Laws, 1994, ch. 524, § 2; Laws, 2002, ch. 438, § 2, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. Defamation action.

Summary judgment for defendants was proper in a physician's defamation action against a tire company and a professional services review company, engaged pursuant to Miss. Code Ann. § 41-63-3, regarding reports questioning the necessity of

certain medical procedures performed by the physician because a qualified privilege existed since the statements were made to those with a direct interest in the subject matter. *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049 (Miss. 2005).

RESEARCH REFERENCES

ALR. Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition. 46 A.L.R.5th 821.

§ 41-63-4. Department of Health to design and establish registry program of the condition and treatment of persons seeking medical care; rules, regulations and procedures governing program; State Health Data Advisory Committee established; types of information provided to registry; confidentiality of information; penalties for knowing or negligent release of data in violation of this section; penalties for failure to provide data; fees and charges.

(1) In order to improve the quality and efficiency of medical care, the State Department of Health shall design and establish a registry program of the condition and treatment of persons seeking medical care that will provide the following:

(a) Information in a central data bank system of accurate, precise and current information regarding the diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons provided by licensed health-care providers designated by the State Board of Health;

(b) Collection of that data;

(c) Dissemination of that data; and

(d) Analysis of that data for the purposes of the evaluation and improvement of the quality and efficiency of medical care provided in a health-care facility.

(2) The State Board of Health shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(3) At a minimum, the board shall require that each hospital, free-standing ambulatory surgical facility and outpatient diagnostic imaging center shall submit patient data as defined by the board to the Mississippi Hospital Association or the department within sixty (60) days after the close of each calendar quarter for all patients that were discharged or died during that quarter.

(4)(a) There is created a State Health Data Advisory Committee to advise and make recommendations to the board regarding rules and regulations promulgated under this section. The committee shall consist of the following members:

(i) A representative of the Mississippi Hospital Association appointed by the association;

(ii) A representative of the Mississippi State Medical Association appointed by the association;

(iii) A representative of the Mississippi Nurses Association appointed by the association;

(iv) A representative of the Mississippi Health Care Association appointed by the association;

(v) A health researcher appointed by the Board of Trustees of State Institutions of Higher Learning;

(vi) A representative of the State Department of Health appointed by the State Health Officer;

(vii) A consumer representative who is not professionally involved in the purchase, provision, administration, or utilization review of health care or insurance appointed by the Governor;

(viii) A representative of a third-party payer appointed by the Governor;

(ix) A member who is not professionally involved in the purchase, provision, administration, or utilization review of health care or insurance and who has expertise in health planning, health economics, health policy, or health information systems appointed by the Governor; and

(x) A member of the business community appointed by the Governor.

(b) Committee members shall serve until a successor is appointed.

(c) Committee members shall elect a chairman and vice chairman and adopt bylaws.

(d) The department shall provide staff assistance as needed to the committee.

(5)(a) The department shall specify the types of information to be provided to the registry. The State Health Data Advisory Committee shall advise the department on the content, format, frequency and transmission of the data to be provided.

(b) Data elements required to be submitted must comply with current national standards recommended by the National Uniform Billing Committee, the National Committee on Vital Health Statistics, or similar national standards setting body.

(6) The department shall accept data submitted by the Mississippi Hospital Association on behalf of hospitals by entering into a binding agreement negoti-

ated with the association to obtain data required under this section. A health-care provider shall submit the required information to the department:

(a) If the provider does not submit the required data through the Mississippi Hospital Association;

(b) If no binding agreement has been reached within ninety (90) days from July 1, 2008, between the department and the Mississippi Hospital Association; or

(c) If a binding agreement has expired for more than ninety (90) days.

(7) The information, data and records shall not divulge the identity of any patient.

(8) Submission of information to and use of information by the department in accordance with this section shall be considered a permitted disclosure for uses and disclosures required by law and for public health activities under the Health Insurance Portability and Accountability Act and the Privacy Rules promulgated thereunder at 45 CFR Sections 164.512(a) and (b).

(9) Notwithstanding any conflicting statute, court rule or other law, the data maintained in the registry shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action. However, information and data otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were provided to the registry.

(10) The department shall assure that public use data are made available and accessible to interested persons in accordance with the rules and regulations promulgated by the board.

(11) Notwithstanding other actions or remedies afforded to persons about whom data is released, a person who knowingly or negligently releases data in violation of this section is liable for a civil penalty of not more than Ten Thousand Dollars (\$10,000.00).

(12) A person or organization who fails to supply data required under this section is liable for a civil penalty of Five Cents (5¢) for each record for each day the submission is delinquent. A submission is delinquent if the department does not receive it within thirty (30) days after the date the submission was due. If the department receives the submission in incomplete form, the department shall notify the provider and allow fifteen (15) additional days to correct the error. The notice shall provide the provider an additional fifteen (15) days to submit the data before the imposition of any civil penalty. The maximum civil penalty for a delinquent submission is Ten Dollars (\$10.00) for each record. The department shall issue an assessment of the civil penalty to the provider. The provider has a right to an informal conference with the department, if the provider requests the conference within thirty (30) days of receipt of the assessment. After the informal conference or, if no conference is requested, after the time for requesting the informal conference has expired, the department may proceed to collect the penalty. In its request for an informal conference, the provider may request the department to waive the penalty. The department may waive the penalty in cases of an act of God or other acts beyond the control of the provider. Waiver of the penalty is in the sole discretion of the department.

(13) The board shall have the authority to set fees and charges with regard to the collection and compilation of data requested for special reports and for the dissemination of data. The revenue derived from the fees imposed in this section shall be deposited by the Department of Health in a special fund that is created in the State Treasury, which is earmarked for use by the department in conducting its activities under this section.

SOURCES: Laws, 2002, ch. 438, § 1; Laws, 2008, ch. 446, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment added (3), (4), (6), (8) and (10) through (13); redesignated and rewrote former (3) as present (5); redesignated former (4) as present (7) and former (6) as present (9); and substituted “by licensed health care providers designated by the State Board of Health” for “in an acute care hospital as that term is defined in Section 41-7-173(h)(i)” in (1)(a).

Cross References — For Mississippi Medicaid Program and the Children’s Health Insurance Program; focused on premature infant healthcare, see § 43-13-147.

§ 41-63-5. Immunity from liability of furnishers of medical or dental information and of members of review committees for action taken.

No physician, dentist, pharmacist, nurse, hospital, organization or institution furnishing information, data, reports or records under Section 41-63-3 or 41-63-4 shall, by reason of furnishing such information be liable in damages to any person. No hospital, hospital governing body, medical or dental review committee, or member of such a committee or governing body, or employee thereof, shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of any medical or dental review committee if such committee or committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him at the time of such action or recommendation.

SOURCES: Laws, 1977, ch. 346, § 3; Laws, 1984, ch. 464, § 3; Laws, 1994, ch. 524, § 3; Laws, 2002, ch. 438, § 3, eff from and after July 1, 2002.

RESEARCH REFERENCES

ALR. Recovery for emotional distress resulting from statement of medical practitioner or official, allegedly constituting outrageous conduct. 34 A.L.R.4th 688.

§ 41-63-7. Confidentiality of names of patients studied.

The identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. Any person who reveals the identity of such person in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to confinement in the county jail for a term not to exceed one (1) year and fined a sum not to exceed five hundred dollars (\$500.00).

SOURCES: Laws, 1977, ch. 346, § 4, eff from and after passage (approved March 14, 1977).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-63-9. Discoverability and admissibility into evidence of proceedings and records of review committees.

(1) Notwithstanding any conflicting statute, court rule or other law, in order to encourage medical and dental review activity, the proceedings and records of any medical or dental review committee shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action arising out of the matters which are the subject of evaluation and review by such committee. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any civil action regarding any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions or other actions of the committee or its members. However, information, documents or records otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during the proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to other matters within his knowledge. Provided, however, a witness shall not be questioned concerning his participation on or testimony before such committee or opinions formed by him as a result of such committee hearings or proceedings.

(2) The provisions of subsection (1) of this section which limit the discovery of medical or dental review committee records and proceedings shall not apply in any legal action brought by a medical or dental review committee to restrict or revoke a physician's license to practice medicine or hospital staff privileges, or in any legal action brought by an aggrieved physician against any member of the committee or the legal entity which formed such committee for actions alleged to have been malicious.

(3) The provisions of this statute, including the confidentiality provided in this subsection, shall be deemed part of the substantive law of this state enacted for the expressed legislative purpose of promoting quality patient care through medical and dental peer review activities.

SOURCES: Laws, 1977, ch. 346, § 5; Laws, 1984, ch. 464, § 4; Laws, 1994, ch. 524, § 4, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. In general.
2. Privileged matter.

Claypool v. Mladineo, 724 So. 2d 373 (Miss. 1998).

1. In general.

The legislature clearly had the authority to enact §§ 41-63-9 and 41-63-23.

2. Privileged matter.

The privilege for records and transcripts of the proceedings of peer review

committees does not extend to material otherwise discoverable from original sources, but factual data available to the committee (not generated by or collected for the use of the committee) is discoverable. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

The privilege for records and transcripts of the proceedings of peer review committees only prohibits persons involved or present at committee proceedings from testifying as to the evidence produced during the committee proceedings; a person, even if a member of a committee or present during committee proceedings, is allowed to testify to other matters within his knowledge not specifically prohibited by the statutory language. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

Information, records, or documents submitted to peer review committees should not be privileged merely because they were presented to the committee if they are obtainable from another source separate and outside of the peer review pro-

ceedings; further a plaintiff can elicit opinions in the form of responses to properly phrased interrogatories or through deposition testimony from a witness present during the proceedings. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

A plaintiff is not entitled to a transcript of the medical peer review committee proceeding to determine what was discussed or considered by the committee; however, a plaintiff is entitled to information and documents presented to the committee in order to know what and where to find the information otherwise discoverable from original sources. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

Defendants who assert the privilege for records and transcripts of the proceedings of peer review committees should be required to provide the names and addresses of all present claiming the medical peer review committee proceedings to the plaintiffs so that they might schedule depositions of those persons. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

The exemption stated in § 41-63-9(2) applies to the State Board of Medical Licensure and, when read in conjunction with § 73-25-28(1), they are entitled to discovery of any records or proceedings brought by a hospital review committee which relate to a matter the board has

under investigation. Burnett, Feb. 22, 2002, A.G. Op. 02-0053.

Statutes pertaining to the confidentiality and discoverability of reviews conducted under the statewide trauma system discussed. Thompson, May 2, 2003, A.G. Op. #02-0645.

RESEARCH REFERENCES

ALR. Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action. 69 A.L.R.5th 559.

§ 41-63-21. Accreditation and quality assurance materials of health-care organizations; definition; confidentiality of materials generally.

The term "accreditation and quality assurance materials" as used in Sections 41-63-21 through 41-63-29 means and shall include written reports, records, correspondence and materials concerning the accreditation or quality assurance of any hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency. However, the

term does not include reports, records, correspondence and materials concerning accreditation or quality assurance that are prepared by the State Department of Health. The confidentiality established by Sections 41-63-21 through 41-63-29 shall apply to accreditation and quality assurance materials prepared by an employee, advisor or consultant of any hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency and to materials provided by an employee, advisor or consultant of an accreditation, quality assurance or similar agency or similar body and to any individual who is an employee, advisor or consultant of a hospital, nursing home or other health-care facility and any medical care foundation, health maintenance organization, preferred provider organization, individual practice association or similar entity or any ambulance service or other prehospital emergency response agency, or accrediting, quality assurance or similar agency or body.

SOURCES: Laws, 1995, ch. 467, § 1; Laws, 2006, ch. 394, § 2, eff from and after July 1, 2006.

§ 41-63-23. Accreditation and quality assurance materials of health-care organizations; discovery or introduction into evidence in civil actions; admissibility of testimony relating to preparation, evaluation or review of materials; admissibility of documents from original sources.

Accreditation and quality assurance materials, as defined in Sections 41-63-21 through 41-63-29, shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against the health-care professional or institution. No person involved in preparation, evaluation or review of accreditation or quality assurance materials shall be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the course of preparation, evaluation or review of such materials or as to any finding, recommendation, evaluation, opinion, or other action of such accreditation or quality assurance or other person involved therein. Information, documents or records otherwise available from original sources are not to be construed as being unavailable for discovery or for use in any civil action merely because they were presented or used in preparation of accreditation or quality assurance materials, nor should any person involved in preparation, evaluation or review of such materials be prohibited from testifying as to matters within his knowledge, but the witness testifying should not be asked about any opinions or data given by him in preparation, evaluation or review of accreditation or quality assurance materials.

SOURCES: Laws, 1995, ch. 467, § 2, eff from and after July 1, 1995.

Cross References — Applicability of the provisions of this section in certain legal actions brought by or against physicians, hospitals or other health care entities or persons acting on behalf of the entities, see § 41-63-25.

JUDICIAL DECISIONS

1. In general.
2. Privileged matter.

1. In general.

The legislature clearly had constitutional authority to enact §§ 41-63-9 and 41-63-23. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

2. Privileged matter.

In a case where a patient was injured during an attempted escape from a mental health facility, a trial court did not err in partially denying a motion in limine because a patient advocate was not the equivalent of a quality assurance officer and subject to Miss. Code Ann. § 41-63-23. *Miss. Dep't of Mental Health v. Hall*, 936 So. 2d 917 (Miss. 2006).

The privilege for records and transcripts of the proceedings of peer review committees does not extend to material otherwise discoverable from original sources, but factual data available to the committee (not generated by or collected

for the use of the committee) is discoverable. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

The privilege for records and transcripts of the proceedings of peer review committees only prohibits persons involved or present at committee proceedings from testifying as to the evidence produced during the committee proceedings; a person, even if a member of a committee or present during committee proceedings, is allowed to testify to other matters within his knowledge not specifically prohibited by the statutory language. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

Defendants who assert the privilege for records and transcripts of the proceedings of peer review committees should be required to provide the names and addresses of all present claiming the medical peer review committee proceedings to the plaintiffs so that they might schedule depositions of those persons. *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

§ 41-63-25. Accreditation and quality assurance materials of health-care organizations; use of materials in proceedings relating to restriction or revocation of physician's license.

The provisions of Section 41-63-23 shall not apply in any legal action brought by a hospital or other health-care entity to restrict or revoke a physician's license to practice medicine or hospital staff privileges, or in any legal action brought by an aggrieved physician against any hospital, health-care entity, or person acting on behalf of any such entity for actions alleged to have been malicious.

SOURCES: Laws, 1995, ch. 467, § 3, eff from and after July 1, 1995.

§ 41-63-27. Construction of Sections 41-63-21 through 41-63-29 with Mississippi Rules of Civil Procedure and Evidence.

It is not the intent of Sections 41-63-21 through 41-63-29 to amend, alter or modify the Mississippi Rules of Civil Procedure and Evidence as promulgated by the Mississippi Supreme Court.

SOURCES: Laws, 1995, ch. 467, § 4, eff from and after July 1, 1995.

§ 41-63-29. Effect and purpose of Sections 41-63-21 through 41-63-29.

The provisions of Sections 41-63-21 through 41-63-29, including the confidentiality provided in Sections 41-63-21 through 41-63-29 shall be deemed part of the substantive law of this state enacted for the express legislative purpose of promoting quality patient care through accreditation and quality assurance functions.

SOURCES: Laws, 1995, ch. 467, § 5, eff from and after July 1, 1995.

CHAPTER 65

[Reserved]

CHAPTER 67

Mississippi Individual On-Site Wastewater Disposal System Law

SEC.

- 41-67-1. Short title; legislative purpose, findings and intent [Repealed effective July 1, 2011].
- 41-67-2. Definitions [Repealed effective July 1, 2011].
- 41-67-3. Duties and responsibilities [Repealed effective July 1, 2011].
- 41-67-4. Duties and responsibilities of the Commission on Environmental Quality regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2011].
- 41-67-5. Filing notice of intent for installation of an individual on-site wastewater disposal system [Repealed effective July 1, 2011].
- 41-67-6. Recommendations; request for determination of suitability; noncompliance and penalties; post-construction or installation final approval request; owner required to keep continuing maintenance agreement with certified maintenance provider or qualified homeowner and penalty for violation [Repealed effective July 1, 2011].
- 41-67-7. Requirements for approval of disposal systems; determination of feasibility [Repealed effective July 1, 2011].
- 41-67-8. Repealed.
- 41-67-9. Existing disposal systems; requirements for approval [Repealed effective July 1, 2011].
- 41-67-10. Testing and listing of advanced aerobic treatment systems; implementation of on-site maintenance training program; certificate upon completion of training program [Repealed effective July 1, 2011].
- 41-67-11. Temporary disposal systems; requirements for approval [Repealed effective July 1, 2011].
- 41-67-12. Assessment of fees [Repealed effective July 1, 2011].
- 41-67-13. Repealed.
- 41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2011].
- 41-67-16. Repealed.
- 41-67-17. Repealed.
- 41-67-19. Demonstrable competence of agents; implementing Chapter; completion of installer certification training [Repealed effective July 1, 2011].
- 41-67-21. Owner repair of malfunctioning disposal system; abatement of health hazards; penalty for violations [Repealed effective July 1, 2011].
- 41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2011].
- 41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2011].
- 41-67-27. Registration required for manufacturers of individual on-site wastewater disposal systems or alternative treatment or disposal components to operate business [Repealed effective July 1, 2011].
- 41-67-28. Violations; penalties and damages [Repealed effective July 1, 2011].
- 41-67-29. Appeals [Repealed effective July 1, 2011].
- 41-67-31. Repeal of §§ 41-67-1 through 41-67-29 and §§ 41-67-33 through 41-67-39.
- 41-67-33. Procedures for conducting reviews requested by persons aggrieved by disapproval or requirements for on-site wastewater disposal system;

- hearing; final decision by State Health Officer [Repealed effective July 1, 2011].
- 41-67-35. Certified maintenance providers; certification requirements; renewal; official list of certified maintenance providers; penalty for operating without certification [Repealed effective July 1, 2011].
- 41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2011].
- 41-67-39. License required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; license requirements; official list of licensed pumpers; penalty for operating without license [Repealed effective July 1, 2011].

§ 41-67-1. Short title; legislative purpose, findings and intent [Repealed effective July 1, 2011].

(1) This chapter shall be known and may be cited as the “Mississippi Individual On-Site Wastewater Disposal System Law.”

(2) It is the purpose of the Legislature through this chapter to protect human health and the environment while providing for reasonable use of individual on-site wastewater disposal systems. The Legislature finds that continued installation and operation of individual on-site wastewater disposal systems in a faulty or improper manner, in a manner that lacks essential maintenance for the system, or in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and welfare and the environment through contamination of land, groundwater and surface waters. The Legislature, therefore, expresses a general preference for the installation and operation of centralized sewerage systems in Mississippi, where feasible. The Legislature recognizes, however, that individual on-site wastewater treatment and disposal systems help meet the needs of the state’s citizens, especially in rural locations, and can be rendered ecologically safe and protective of the public health if the systems are designed, installed, constructed, maintained and operated properly. It is the intent of the Legislature to allow the continued installation, use and maintenance of individual on-site wastewater disposal systems in a manner that will not jeopardize public health and welfare or the environment.

SOURCES: Laws, 1996, ch. 516, § 1; reenacted without change, Laws, 2001, ch. 578; reenacted without change, Laws, 2002, ch. 493, § 1; reenacted without change, Laws, 2003, ch. 525, § 1; reenacted without change, Laws, 2005, ch. 545, § 1; reenacted without change, Laws, 2006, ch. 391, § 1; reenacted and amended, Laws, 2008, ch. 563, § 1, eff from and after July 1, 2009.

Editor’s Note — Aprior § 41-67-1 [Laws, 1978, ch. 455, § 1, eff from and after July 1, 1978] was repealed by provisions of § 41-67-17, effective July 1, 1995.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, adding (2).

JUDICIAL DECISIONS

1. Interpretation.

Both Miss. Code Ann. § 19-5-151 et seq. and Miss. Code Ann. § 41-67-1 et seq., regulate health-related matters. As such, they can be considered in *pari materia*, and any ambiguities in one provision should be resolved by applying the statute consistently with other statutes dealing with the same or similar subject matter. *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So. 2d 1022 (Miss. 2005), cert. denied, — U.S. —, 126 S. Ct. 1883, 164 L. Ed. 2d 568 (2006).

Water and sewer district's ordinance regulating individual wastewater disposal systems was not preempted by Mississippi

Individual On-Site Wastewater Disposal System Law, Miss. Code Ann. §§ 41-67-1 to 41-67-31, and was a valid exercise of sewer district's general police powers and its power to regulate it's the general health of its residents granted under Miss. Code Ann. § 19-5-173. The Mississippi On-Site Wastewater Disposal System Law, while not mentioning sewer districts, did not expressly prevent sewer districts from regulating the use or maintenance of individual on-site wastewater disposal systems, and it did not repeal Miss. Code Ann. § 19-5-173. *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So. 2d 1 (Miss. Ct. App. 2004).

§ 41-67-2. Definitions [Repealed effective July 1, 2011].

For purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Advanced treatment system" means individual on-site wastewater treatment systems that comply with Section 47-67-10.

(b) "Alternative system" means any on-site sewage treatment and disposal system used in lieu of a conventional system.

(c) "Board" means the Mississippi State Board of Health.

(d) "Centralized sewerage system" means pipelines or conduits, pumping stations, force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal other than an individual on-site wastewater disposal system.

(e) "Certified maintenance provider" means any person who holds a written certification issued by the department allowing the person to provide maintenance services associated with approved on-site wastewater treatment and disposal systems.

(f) "Certified professional evaluator" means any person who has met the requirements of Section 41-67-37.

(g) "Conventional system" means an individual on-site wastewater disposal system consisting of a septic tank and gravity-fed subsurface disposal field.

(h) "Department" means the Mississippi State Department of Health.

(i) "Generator" means any person whose act or process produces sewage or other material suitable for disposal in an individual on-site wastewater disposal system.

(j) "Individual on-site wastewater disposal system" means a sewage treatment and effluent disposal system that does not discharge into waters of the state, that serves only one (1) legal tract, that accepts only residential

waste and similar waste streams maintained on the property of the generator, and that is designed and installed in accordance with this law and regulations of the board.

(k) “Installer” means any person who has met the requirements of Section 41-67-25.

(l) “Performance-based system” means an individual on-site wastewater disposal system designed to meet standards established to designate a level of treatment of wastewater that an individual on-site wastewater disposal system must meet, including, but not limited to, biochemical oxygen demand, total suspended solids, nutrient reduction and fecal coliform.

(m) “Person” means any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

(n) “Property of the generator” means land owned by or under permanent legal easement or lease to the generator.

(o) “Qualified homeowner” means the current owner of a specific residence where that homeowner resides and where the homeowner has met the requirements of the Department of Health regulations.

(p) “Subdivision” means any tract or combination of adjacent tracts of land that is subdivided into ten (10) or more tracts, sites or parcels for the purpose of commercial or residential development.

SOURCES: Laws, 1996, ch. 516, § 2; reenacted without change, Laws, 2001, ch. 578, § 2; reenacted without change, Laws, 2002, ch. 493, § 2; reenacted without change, Laws, 2003, ch. 525, § 2; reenacted and amended, Laws, 2005, ch. 545, § 2; reenacted without change, Laws, 2006, ch. 391, § 2; reenacted and amended, Laws, 2008, ch. 563, § 2, eff from and after July 1, 2009.

Editor’s Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, adding (a), (b), (d) through (g), (k), (l) and (o), deleting former (f), which defined “professional engineer,” redesignating former (a) as present (c), former (b) through (d) as present (h) through (j), former (e) as present (m), former (g) as present (n), and former (h) as present (p), substituting “residential waste” for “human sanitary waste” in (j), and rewriting (p).

§ 41-67-3. Duties and responsibilities [Repealed effective July 1, 2011].

(1) The State Board of Health shall have the following duties and responsibilities:

(a) To exercise general supervision over the design, construction, operation and maintenance of individual on-site wastewater disposal systems;

(b) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or

state law, to make exceptions to, to grant exemptions from and to enforce rules and regulations implementing or effectuating the duties of the board under this chapter to protect the public health. The board may grant variances from rules and regulations adopted under this chapter, including requirements for buffer zones, or from setbacks required under Section 41-67-7 where the granting of a variance shall not subject the public to unreasonable health risks or jeopardize environmental resources;

(c) To provide or deny certification for persons engaging in the business of the design, construction or installation of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems;

(d) To suspend or revoke certifications issued to persons engaging in the business of the design, construction or installation of individual on-site wastewater disposal systems or persons engaging in the removal and disposal of the sludge and liquid waste from those systems, when it is determined the person has violated this chapter or applicable rules and regulations;

(e) To require the submission of information deemed necessary by the department to determine the suitability of individual lots for individual on-site wastewater disposal systems; and

(f) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, as necessary to determine the suitability of individual on-site wastewater disposal systems in subdivisions.

(2) Nothing in this chapter shall preclude a certified professional evaluator from providing services relating to the design of an individual on-site wastewater disposal system to comply with this chapter, except for performance-based systems as specified in subsection (4) of this section. A certified engineer evaluator shall notify the department in writing of those services being provided before construction or installation. If a certified professional evaluator designs a design-based individual on-site wastewater disposal system consistent with this chapter, the certified professional evaluator shall stamp the appropriate documentation with that certified professional evaluator licensure number, if applicable, and the department's certification number and submit the stamped, appropriate documentation to the department for review. Once the department has concurred that the recommended system will adequately treat and dispose of all waste, will maintain the waste on the property of the generator, will not discharge to waters of the state and be in compliance with this chapter and the corresponding regulations, the department shall approve the design of the system. Construction or installation before department approval is prohibited.

(3) To assure the effective and efficient administration of this chapter, the board shall adopt rules governing the design, construction or installation, operation and maintenance of individual on-site wastewater disposal systems, including rules concerning the:

(a) Review and approval of individual on-site wastewater disposal systems in accordance with Section 41-67-6;

(b) Certification of installers of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems;

(c) Registration and requirements for testing and listing of manufacturers of advanced treatment systems;

(d) Certification of certified maintenance providers;

(e) Certification of certified professional evaluators;

(f) Create regulations that authorize the original and any subsequent homeowner to be trained by factory installers or other factory representatives in order to educate the homeowner with the necessary knowledge to provide maintenance to the homeowner's system, thus allowing the homeowner to meet the requirements of Section 41-67-6(8).

(4) In addition, the board shall adopt rules establishing performance standards for individual on-site wastewater disposal systems for single family residential generators and rules concerning the operation and maintenance of individual on-site wastewater disposal systems designed to meet those standards. The performance standards shall be consistent with the federal Clean Water Act, maintaining the wastes on the property of the generator and protection of the public health. Rules for the operation and maintenance of individual on-site wastewater disposal systems designed to meet performance standards shall include rules concerning the following:

(a) A standard application form and requirements for supporting documentation;

(b) Application review;

(c) Approval or denial of authorization for proposed systems;

(d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;

(e) Enforcement of the requirements and conditions of authorization; and

(f) Inspection, monitoring, sampling and reporting on the performance of the system.

Any system proposed for authorization in accordance with performance standards must be designed and certified by a professional engineer registered in the State of Mississippi who is a certified professional evaluator and must be authorized by the board before installation.

(5) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including alternative techniques and technologies for individual on-site wastewater disposal.

(6) All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

(7) No public utility supplying water shall make connection to any dwelling house, mobile home or residence without the prior written approval of the department certifying that the sewage treatment and disposal system at the location of the property complies with this chapter. Temporary connections of water utilities may be made during construction if the department has approved a plan for a sewage treatment and disposal system and the owner of the property has agreed to have the system inspected and approved by the department before the use or occupancy of the property.

SOURCES: Laws, 1996, ch. 516, § 3; reenacted without change, Laws, 2001, ch. 578, § 3; reenacted without change, Laws, 2002, ch. 493, § 3; reenacted without change, Laws, 2003, ch. 525, § 3; reenacted and amended, Laws, 2005, ch. 545, § 3; reenacted without change, Laws, 2006, ch. 391, § 3; reenacted and amended, Laws, 2008, ch. 563, § 3, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-3 [Laws, 1978, ch 455, § 2; Laws, 1987, ch. 512, § 1; reenacted, Laws, 1989, ch. 555, § 1; reenacted and amended, Laws, 1991, ch. 616, § 1, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, adding (1)(f), rewriting (2), substituting “advanced treatment” for “aerobic treatment” in (3)(c), adding (3)(d) through (f), rewriting the last paragraph of (4), adding (7), and making minor stylistic changes.

Cross References — Powers and duties of State Board of Health, including requirement by Board that, from and after January 1, 1998, persons installing individual onsite wastewater disposal systems or removing waste from such systems be licensed to do so, see § 41-3-15.

Certification of certified maintenance providers, see § 41-67-35.

Certification of certified professional evaluators, see § 41-67-37.

Federal Aspects — Clean Water Act generally, see 33 USCS §§ 1251 et seq.

ATTORNEY GENERAL OPINIONS

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. Hall, January 30, 1998, A.G. Op. #98-0047.

The Mississippi State Department of Health is the proper party to approve the design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county board of supervisors does not have authority to

prohibit professional engineers from designing, constructing, or installing individual on-site wastewater disposal systems, or directly supervising same. Thompson, Jr., Oct. 12, 2001, A.G. Op. #01-0627.

The board of health has the authority to adopt regulations aimed at owners of individual onsite wastewater disposal systems (IOWDS) setting minimum standards concerning the maintenance of the IOWDS, and also to provide for periodic inspections to ensure such compliance, but the board may not require owners to enter maintenance contracts. Amy, Apr. 18, 2006, A.G. Op. 06-0018.

§ 41-67-4. Duties and responsibilities of the Commission on Environmental Quality regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2011].

(1) The board shall determine the feasibility of establishing community sewerage systems upon the submission by the developer of a preliminary design and feasibility study prepared by a professional engineer. The developer may request and obtain a hearing before the board if the developer is dissatisfied with the board's determination of feasibility. The determination that a sewerage system must be established shall be made without regard to whether the establishment of a sewerage system is authorized by law or is subject to approval by one or more state or local government or public bodies. Whenever a developer requests a determination of feasibility, the board must make the determination within forty-five (45) days after receipt of the preliminary design and feasibility study from the developer. The board shall state in writing the reasons for its determination. If the board does not make a determination within forty-five (45) days, all sites within the subdivision shall be approved, if a certified installer attests that each site can be adequately served by an individual on-site wastewater disposal system.

(2) Where residential subdivisions are proposed which are composed of fewer than thirty-five (35) building sites, and no system of sanitary sewers is available to which collection sewers may be feasibly connected, the board may waive the requirement for a feasibility study. If the feasibility study is waived, all sites within the subdivision shall be approved, if a certified installer attests that each site can be adequately served by an individual on-site wastewater disposal system.

(3) No feasibility study or community sewerage system shall be required for subdivisions designed, laid out, platted or partially constructed before July 1, 1988, or for any subdivision that was platted and recorded during the period from July 1, 1995, through June 30, 1996.

SOURCES: Laws, 1996, ch. 516, § 4; reenacted without change, Laws, 2001, ch. 578, § 4; reenacted without change, Laws, 2002, ch. 493, § 4; reenacted and amended, Laws, 2003, ch. 525, § 4; Laws, 2005, ch. 545, § 4; reenacted without change, Laws, 2006, ch. 391, § 4; reenacted without change, Laws, 2008, ch. 563, § 4, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-4 [Laws, 1992, ch. 536, § 1, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

§ 41-67-5. Filing notice of intent for installation of an individual on-site wastewater disposal system [Repealed effective July 1, 2011].

(1) No owner, lessee or developer shall construct or place any mobile, modular or permanently constructed residence, building or facility, which may

require the installation of an individual on-site wastewater disposal system, without having first submitted a notice of intent to the department. Upon receipt of a notice of intent, the department shall provide the owner, lessee or developer with complete information on individual on-site wastewater disposal systems, including, but not limited to, applicable rules and regulations regarding the design, construction, installation, operation and maintenance of individual on-site wastewater disposal systems and known requirements of lending institutions for approval of the systems.

(2) No temporary or permanent water service connection shall be provided to any mobile, modular or permanently constructed residence, building or facility unless the owner, lessee or developer shows proof of the submission of the notice of intent required by this section.

(3) The department shall furnish to the county tax assessor or collector, upon request, the name and address of the person submitting a notice of intent and the section, township and range of the lot or tract of land on which the individual on-site wastewater disposal system will be installed.

SOURCES: Laws, 1996, ch. 516, § 5; reenacted without change, Laws, 2001, ch. 578, § 5; reenacted and amended, Laws, 2002, ch. 493, § 5; reenacted without change, Laws, 2003, ch. 525, § 5; reenacted without change, Laws, 2005, ch. 545, § 5; reenacted without change, Laws, 2006, ch. 391, § 5; reenacted and amended, Laws, 2008, ch. 563, § 5, eff from and after July 1, 2009.

Editor's Note — A prior § 47-67-5 [Laws, 1978, ch. 455, § 6; Laws, 1987, ch. 512, § 2; Laws, 1989, ch. 555, § 2; reenacted and amended, Laws, 1991, ch. 616, § 2; Laws, 1992, ch. 536, § 2, effective from and after July 1, 1992] was repealed by provisions of § 41-67-17, eff July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, substituting “No temporary or permanent” for “No new permanent” at the beginning of (2).

Cross References — Powers and duties of State Department of Health, see § 41-3-15.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 2057. 94 C.J.S., Waters §§ 195, 253, 276, 281.

CJS. 1A C.J.S., Actions §§ 58, 128, 137, 148, 156.

§ 41-67-6. Recommendations; request for determination of suitability; noncompliance and penalties; post-construction or installation final approval request; owner required to keep continuing maintenance agreement with certified maintenance provider or qualified homeowner and penalty for violation [Repealed effective July 1, 2011].

(1) Within five (5) working days following receipt of the notice of intent and plot plan by an owner, lessee or developer of any lot or tract of land, the

department shall conduct a soil and site evaluation, except in cases where a certified professional evaluator provides services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. Within ten (10) additional working days, the department shall make recommendations to the owner, lessee or developer of the type or types of individual on-site wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. In making recommendations on the type or types of individual on-site wastewater disposal systems suitable for installation on a lot or tract, personnel of the department shall use best professional judgment based on rules and regulations adopted by the board, considering the type or types of systems which are installed and functioning on lots or tracts near the subject lot or tract. To the extent practicable, the recommendations shall give the owner, lessee or developer maximum flexibility and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. The system or systems recommended shall be environmentally sound and cost-effective. The department or a certified professional evaluator shall provide complete information, including all applicable requirements and regulations on all systems recommended. The owner, lessee or developer shall have the right to choose among systems. The department shall provide the owner, lessee or developer with a form that specifies all types of individual on-site wastewater disposal systems that are suitable for installation on the lot or tract and lists all installers of those systems that are certified by the department. Approval of the design, construction or installation of an individual on-site wastewater disposal system by the department is required. Upon completion of installation of the system, the department shall approve the design, construction or installation of that system, as requested, if the system is designed, constructed and installed, as the case may be, in accordance with the rules and regulations of the board. Whenever a person requests approval of an individual on-site wastewater disposal system and has met the requirements in subsection (7), the department must approve or disapprove the request within five (5) working days. If the department disapproves the request, the department shall state in writing the reasons for the disapproval. If the department does not respond to the request within ten (10) calendar days, the request for approval of the individual on-site wastewater disposal system shall be deemed approved.

(2) Within thirty (30) days of receipt of a request for determination of suitability of individual on-site wastewater disposal systems in a subdivision, the department shall advise the developer in writing either that all necessary information needed for determination of suitability has been received or state the additional information needed by the department for determination of suitability.

(3) Whenever a developer requests a determination of suitability of individual on-site wastewater disposal systems in a subdivision, the depart-

ment must make the determination within forty-five (45) days after receipt of all necessary information needed for the determination of suitability from the developer. The department shall state in writing the reasons for its determination.

(4)(a) The installer or certified professional evaluator shall notify the department at least forty-eight (48) hours before beginning construction of an individual on-site wastewater disposal system and, at that time, schedule a time for inspection of the system with the appropriate county department of health.

(b) An installer shall not cover his work with soil or other surface material unless the installer has received authorization to cover the system after an inspection by a county department of health inspector.

(5) A person may not design, construct or install, or cause to be designed, constructed or installed an individual on-site wastewater disposal system that does not comply with this chapter and rules and regulations of the board.

(6) If any person or contractor fails to comply with all requirements and regulations in the installation of the system, the board, after due notice and hearing, may levy an administrative fine not to exceed Ten Thousand Dollars (\$10,000.00). Each wastewater system installed not in compliance with this chapter or applicable rules and regulations of the board shall be considered a separate offense.

(7) After construction or installation of the individual on-site wastewater disposal system, the property owner or his agent shall provide a final approval request containing the following to the department:

(a) A signed affidavit from the installer or certified professional evaluator and any additional required documentation that the system was installed in compliance with all requirements, regulations and permit conditions applicable to the system installed; and

(b) For any alternative on-site wastewater disposal system, an affidavit from the property owner agreeing to a continuing maintenance agreement on the installed system at the end of the required manufacturer's maintenance agreement.

(8) The property owner shall keep a continuing maintenance agreement with a certified maintenance provider or qualified homeowner on all alternative on-site wastewater disposal systems in perpetuity.

(a) All systems existing on July 1, 2008, shall be grandfathered in until the system is reapproved, there is a change in property ownership, a complaint is received by the department on the system, or the system is replaced or repaired.

(b) Any person violating this subsection shall be subject to the penalties and damages as provided in Section 41-67-28(5).

SOURCES: Laws, 1996, ch. 516, § 6; Laws, 1999, ch. 565, § 3; reenacted without change, Laws, 2001, ch. 578, § 6; reenacted without change, Laws, 2002, ch. 493, § 6; reenacted and amended, Laws, 2003, ch. 525, § 6; reenacted and amended, Laws, 2005, ch. 545, § 6; reenacted without change, Laws, 2006,

ch. 391, § 6; reenacted and amended, Laws, 2008, ch. 563, § 6, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-7 [Laws, 1992, ch. 536, § 3, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, rewriting the section.

Federal Aspects — Clean Water Act generally, see 33 USCS §§ 1251 et seq.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 1998.

§ 41-67-7. Requirements for approval of disposal systems; determination of feasibility [Repealed effective July 1, 2011].

Individual on-site wastewater disposal systems shall be considered acceptable on lots in areas or subdivisions where prior to the sale of the lots, the following requirements are met:

(1) Individual on-site wastewater disposal systems with underground absorption fields shall be considered acceptable, provided the following requirements are met:

(a) Sewers are not available or feasible;

(b) The existing disposal systems in the area are functioning satisfactorily;

(c) Soil types, soil texture, seasonal water tables and other limiting factors are satisfactory for underground absorption; and

(d) Any private water supply is located at a higher elevation or it must be properly protected and at least fifty (50) feet from the individual on-site wastewater disposal system and at least one hundred (100) feet from the disposal field of the system.

(2) Except for systems utilizing underground absorption, alternative individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:

(a) Sewers are not available or feasible; and

(b) The systems meet applicable water quality requirements of the federal Clean Water Act and also requirements of the board and department.

SOURCES: Laws, 1996, ch. 516, § 7; reenacted without change, Laws, 2001, ch. 578, § 7; reenacted without change, Laws, 2002, ch. 493, § 7; reenacted without change, Laws, 2003, ch. 525, § 7; reenacted and amended, Laws, 2005, ch. 545, § 7; reenacted without change, Laws, 2006, ch. 391, § 7; reenacted and amended, Laws, 2008, ch. 563, § 7, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-7 [Laws, 1978, ch. 455, § 3(1), (2); Laws, 1987, ch. 512, § 3; Laws, 1989, ch. 555, § 3; reenacted and amended, Laws, 1991, ch. 616, § 3; Laws, 1992, ch. 536, § 4, eff from and after July 1, 1992 was repealed by provisions of § 41-67-17, effective July 1, 1995].

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, inserting “or it must be properly protected” in (1)(d), deleting former (2)(c), which read: “Any discharge is confined within the boundaries of the property of the generator,” and making minor stylistic changes.

Federal Aspects — Clean Water Act generally, see 33 USCS §§ 1251 et seq.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 2057.

§ 41-67-8. Repealed.

Repealed by its own terms, effective September 1, 2005.

§ 41-67-8. [Laws, 1996, ch. 516, § 8; reenacted without change, Laws, 2001, ch. 578, § 8; reenacted without change, Laws, 2002, ch. 493, § 8; reenacted without change, Laws, 2003, ch. 525, § 8; reenacted and amended, Laws, 2005, ch. 545, § 8, eff from and after July 1, 2005.]

Editor's Note — Former § 41-67-8 provided for the determination of applicability of individual on-site wastewater systems.

§ 41-67-9. Existing disposal systems; requirements for approval [Repealed effective July 1, 2011].

(1) Existing individual on-site wastewater disposal systems shall be considered acceptable, provided the following requirements are met:

(a) The lot is located in an area or subdivision where individual on-site wastewater disposal systems are considered acceptable under this chapter;

(b) The residence, building or facility has previously been occupied for a period of time deemed by the department necessary to determine the functioning capability of the individual on-site wastewater disposal system;

(c) The system is functioning properly with no evidence that any insufficiently treated effluent is or has been seeping to the surface of the ground and any discharge of treated effluent is confined within the boundaries of the property of the generator; and

(d) If a private water supply well is present, the well should be located at a higher elevation than the disposal system and is protected from surface contamination by a concrete slab of a thickness of at least four (4) inches extending at least two (2) feet in all directions from the well casing.

(2) If an existing residential individual on-site wastewater disposal system is malfunctioning, the system should be replaced, where possible, with a system meeting all requirements of this chapter and rules and regulations of the board. If replacement of the existing system is not possible, the existing system shall be repaired to reduce the volume of effluent, to adequately treat

the effluent and to the greatest extent possible, to confine the discharge to the property of the generator. If repairs are made to significantly upgrade the existing individual on-site wastewater disposal system, the department shall approve the system, if requested.

SOURCES: Laws, 1996, ch. 516, § 9; reenacted without change, Laws, 2001, ch. 578, § 9; reenacted without change, Laws, 2002, ch. 493, § 9; reenacted without change, Laws, 2003, ch. 525, § 9; reenacted and amended, Laws, 2005, ch. 545, § 9; reenacted without change, Laws, 2006, ch. 391, § 8; reenacted and amended, Laws, 2008, ch. 563, § 8, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-10 [Laws, 1978, ch. 455, § 3(3); brought forward, Laws, 1991, ch. 616, § 4; reenacted and amended, Laws, 1992, ch. 536, § 5, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, substituting “well should be located” for “well is located” near the beginning of (1)(d).

§ 41-67-10. Testing and listing of advanced aerobic treatment systems; implementation of on-site maintenance training program; certificate upon completion of training program [Repealed effective July 1, 2011].

(1) Advanced aerobic treatment systems may be installed only if they have been tested and are listed by a third-party certifying program at the time of installation. Advanced aerobic treatment systems shall be in compliance with standards for a Class I system as defined by the most current revision of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) International Standard Number 40, which are incorporated by reference. An approved third-party certifying program shall comply with the following provisions for systems which it has certified to be installed in Mississippi:

(a) Be accredited by the American National Standards Institute;

(b) Have established procedures which send representatives to distributors in Mississippi on a recurring basis to conduct evaluations to assure that distributors of certified advanced treatment systems are providing proper maintenance, have sufficient replacement parts available and are maintaining service records;

(c) Notify the department of the results of monitoring visits to manufacturers and distributors within sixty (60) days of the conclusion of the monitoring; and

(d) Submit completion reports on testing and any other information as the department may require for its review.

(2)(a) The department shall implement an on-site maintenance training program inclusive of all systems authorized to do business and certified in the State of Mississippi.

(b) All manufacturers of alternate disposal systems certified in Mississippi shall provide technical training staff to the department for utilization during the on-site maintenance training program.

(c) All persons successfully completing the department's on-site maintenance training program will be issued a Department of Health on-site wastewater maintenance certification, which shall be valid for two (2) years.

(d) All wastewater maintenance staff certified by manufacturers whose alternate disposal systems are certified for sale in Mississippi shall be certified by the department to perform on-site wastewater maintenance on that manufacturer's alternate disposal systems.

SOURCES: Laws, 1996, ch. 516, § 10; reenacted without change, Laws, 2001, ch. 578, § 10; reenacted without change, Laws, 2002, ch. 493, § 10; reenacted without change, Laws, 2003, ch. 525, § 10; reenacted without change, Laws, 2005, ch. 545, § 10; reenacted without change, Laws, 2006, ch. 391, § 9; reenacted and amended, Laws, 2008, ch. 563, § 9, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-10 [Laws, 1992, ch. 536, § 6, effective from and after July 1, 1992] was repealed by provisions of § 41-67-17, eff July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, rewriting the introductory paragraph of (1), inserting "advanced" preceding "treatment systems" in (1)(b), and adding (2).

ATTORNEY GENERAL OPINIONS

An aerobic treatment system must be tested and listed according to the rules of the Board of Health and, in addition, must have been tested and listed by a third party certifying program according to the rules and regulations of the Board for

testing and listing of manufacturers of such systems and must also be in compliance with the most current revision of the ANSI/NSF standard. Hall, January 30, 1998, A.G. Op. #98-0047.

§ 41-67-11. Temporary disposal systems; requirements for approval [Repealed effective July 1, 2011].

(1) Temporary individual on-site wastewater disposal systems may be approved in an area where individual on-site wastewater disposal systems otherwise would not be approved because of the availability or feasibility of connection to a centralized sewerage system only after a contract has been awarded or other definite commitments as are deemed sufficient to the department are formalized for the construction of municipal or community sewers that upon completion will adequately serve the property. Temporary individual on-site wastewater disposal systems shall only be approved when the municipal or community sewers will be completed and available for use within thirty-six (36) months. The department may approve the installation of a temporary system under these circumstances only if the system will comply with the requirements of Section 41-67-5(1) and comply with all construction requirements of the board. The temporary system may be installed only after the developer has signed a

written agreement with the centralized sewer provider stating that the developer will connect to the centralized sewer system when it becomes available, and the provider of the centralized sewer system being constructed certifies that the centralized sewer system will have adequate capacity to accept the sewage to be produced by the temporary systems. The developer shall install an internal sewage collection system from each lot to the connection point to the central sewer system as he develops the streets of the subdivision. Upon completion of the sewer construction, all systems shall be abandoned and all residences, buildings or facilities connected to the sewer.

(2) The board may approve the installation of sewage holding tanks in districts created under Sections 19-5-151 through 19-5-207 for the purpose of providing sewage services. The district shall be required to maintain or provide for the maintenance of those holding tanks. The board shall require that residences be connected to a municipal or community sewage system when that system is available.

SOURCES: Laws, 1996, ch. 516, § 11; Laws, 1999, ch. 565, § 2; reenacted without change, Laws, 2001, ch. 578, § 11; reenacted without change, Laws, 2002, ch. 493, § 11; reenacted without change, Laws, 2003, ch. 525, § 11; reenacted without change, Laws, 2005, ch. 545, § 11; reenacted without change, Laws, 2006, ch. 391, § 10; reenacted and amended, Laws, 2008, ch. 563, § 10, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-11 [Laws, 1978, ch. 455, § 3(4); brought forward, Laws, 1991, ch. 616, § 5, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, rewriting (1), and deleting “and ready to use” from the end of (2).

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 2057.

§ 41-67-12. Assessment of fees [Repealed effective July 1, 2011].

(1) The department shall assess fees in the following amounts for the following purposes:

(a) A fee of Fifty Dollars (\$50.00) shall be levied for soil and site evaluation and recommendation of individual on-site wastewater disposal systems.

(b) A fee of Fifty Dollars (\$50.00) shall be levied annually for the certification of installers and persons engaging in the removal and disposal of the sludge and liquid wastes from individual on-site wastewater disposal systems.

(c) A fee of One Hundred Dollars (\$100.00) shall be levied annually for the registration of manufacturers.

(2) In the discretion of the board, a person shall be liable for a penalty equal to one and one-half (1-½) times the amount of the fee due and payable for

failure to pay the fee on or before the date due, plus any amount necessary to reimburse the cost of collection.

(3) The fee authorized under this section shall not be assessed for any system operated by state agencies or institutions, including, without limitation, foster homes licensed by the State Department of Human Services. The fee authorized under this section shall not be charged again after payment of the initial fee for any system that has been installed in accordance with this chapter, within a period of twenty-four (24) months following the date that the system was originally installed.

SOURCES: Laws, 1996, ch. 516, § 12; reenacted without change, Laws, 2001, ch. 578, § 12; reenacted without change, Laws, 2002, ch. 493, § 12; reenacted without change, Laws, 2003, ch. 525, § 12; reenacted without change, Laws, 2005, ch. 545, § 12; reenacted without change, Laws, 2006, ch. 391, § 11; reenacted without change, Laws, 2008, ch. 563, § 11, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-12 [Laws, 1986, ch. 371, § 4; 1989, ch. 313, § 3; Laws, 1989, ch. 547, § 3; reenacted, Laws, 1989, ch. 555, § 4; reenacted and amended, Laws, 1991, ch. 616, § 6; Laws, 1992, ch. 536, § 7, eff from and after July 1, 1992] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

§ 41-67-13. Repealed.

Repealed by provisions of § 41-67-17, eff July 1, 1995.

[Laws, 1978, ch. 455, § 4; Laws, 1987, ch. 512 § 4; Laws, 1989, ch. 555, § 5; Laws, 1991, ch. 616, § 7]

Editor's Note — Former § 41-67-13 was entitled: Waiver of economic feasibility study requirement.

§ 41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2011].

Nothing in this chapter shall limit the authority of a municipality or board of supervisors to adopt similar ordinances which may be, in whole or in part, more restrictive than this chapter, and in those cases the more restrictive ordinances will govern. The department shall not approve any system that does not comply with an ordinance adopted by a municipality or board of supervisors under the authority of this section.

SOURCES: Laws, 1996, ch. 516, § 13; reenacted without change, Laws, 2001, ch. 578, § 13; reenacted without change, Laws, 2002, ch. 493, § 13; reenacted without change, Laws, 2003, ch. 525, § 13; reenacted without change,

Laws, 2005, ch. 545, § 13; reenacted without change, Laws, 2006, ch. 391, § 12; reenacted and amended, Laws, 2008, ch. 563, § 12, eff from and after July 1, 2009.

Editor's Note — A prior § 41-67-15 [Laws, 1978, ch. 455, § 5; brought forward, Laws, 1991, ch. 616, § 8, eff from and after passage (approved May 3, 1991)] was repealed by provisions of § 41-67-17, effective July 1, 1995.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, adding the last sentence.

JUDICIAL DECISIONS

1. Authority of utility districts.
2. Authority to regulate wastewater systems.

1. Authority of utility districts.

Although Miss. Code Ann. § 41-67-15 makes no mention of utility districts, the statutory scheme of Miss. Code Ann. § 41-67-1 et seq. does not prohibit water and/or sewer districts from regulating individual on-site wastewater systems. *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So. 2d 1022 (Miss. 2005), cert. denied, — U.S. —, 126 S. Ct. 1883, 164 L. Ed. 2d 568 (2006).

2. Authority to regulate wastewater systems.

Residents argued that water and sewer districts were without power to regulate individual septic tank systems, but the Supreme Court concluded that these districts were not without authority to regulate on-site wastewater systems. *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So. 2d 1022 (Miss. 2005), cert. denied, — U.S. —, 126 S. Ct. 1883, 164 L. Ed. 2d 568 (2006).

ATTORNEY GENERAL OPINIONS

A county may adopt an ordinance requiring all property owners to request the Mississippi State Department of Health to approve the design, construction and installation of any system which would require a waste water disposal system pursuant to this chapter. *Ross*, August 12, 1999, A.G. Op. #99-0407.

The Mississippi State Department of Health is the proper party to approve the

design, construction, and installation of an on-site waste water disposal system when so requested; thus, a county may adopt an ordinance requiring all property owners to request the Mississippi State Health Department to approve the design, construction, or installation of such a system. *Thompson, Jr.*, Oct. 12, 2001, A.G. Op. #01-0627.

§ 41-67-16. Repealed.

Repealed by Laws, 2008, ch. 563, § 24, effective July 1, 2009.

§ 41-67-16. [Laws, 1996, ch. 516, § 14; reenacted without change, Laws, 2001, ch. 578, § 14; reenacted without change, Laws, 2002, ch. 493, § 14; reenacted without change, Laws, 2003, ch. 525, § 14; reenacted without change, Laws, 2005, ch. 545, § 14; reenacted without change, Laws, 2006, ch. 391, § 13; Laws, 2008, ch. 563, § 24, effective from and after July 1, 2009.]

Editor's Note — This section was repealed by the provisions of § 41-67-31, effective July 1, 2009. The section was also repealed by Laws of 2008, ch. 563, § 24, effective July 1, 2009.

Former § 41-67-16 required a study of all individual on-site wastewater disposal systems.

§ 41-67-17. Repealed.

Repealed by Laws, 1996, ch. 516, § 23, eff from and after July 1, 1996.
[Laws, 1991, ch. 616, § 10; 1992, ch. 536, § 15]

Editor's Note — Laws of 1987, ch. 512, § 6, provided for the repeal of sections 41-67-3 through 41-67-7 and 41-67-13, from and after July 1, 1989. Subsequently, Laws of 1989, ch. 555, § 6, amended Section 6 of ch. 512, Laws of 1987, deleting the repeal provision. Thereafter, Laws of 1989, ch. 555, § 7, provided for the repeal of sections 41-67-3 through 41-67-7, 41-67-12 and 41-67-13 from and after July 1, 1991. Subsequently, Laws of 1991, ch. 616, § 9, amended Section 7, ch. 555, Laws of 1989, deleting the repeal provision. However, Laws of 1991, ch. 616, § 10, added a new section, 41-67-17, providing for the repeal of sections 41-67-1 through 41-67-15.

Former § 41-67-17 was entitled: Repeal of §§ 41-67-1 through 41-67-15.

§ 41-67-19. Demonstrable competence of agents; implementing Chapter; completion of installer certification training [Repealed effective July 1, 2011].

Each authorized agent of the department implementing this chapter shall demonstrate to the department's satisfaction that the person:

(a) Is competent to review and provide any requested approval of design, construction and installation of individual on-site wastewater disposal systems, as well as the operation, repair or maintenance of those systems, to make soil permeability tests or soil and site evaluations, and to conduct inspections of individual on-site wastewater disposal systems in accordance with this chapter and rules and regulations adopted under this chapter; and

(b) Has successfully completed the installer certification training program provided by the department.

SOURCES: Laws, 1992, ch. 536, § 8; Laws, 1996, ch. 516, § 15; reenacted without change, Laws, 2001, ch. 578, § 15; reenacted without change, Laws, 2002, ch. 493, § 15; reenacted without change, Laws, 2003, ch. 525, § 15; reenacted without change, Laws, 2005, ch. 545, § 15; reenacted without change, Laws, 2006, ch. 391, § 14; reenacted without change, Laws, 2008, ch. 563, § 13, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

§ 41-67-21. Owner repair of malfunctioning disposal system; abatement of health hazards; penalty for violations [Repealed effective July 1, 2011].

(1) The board or the department may require a property owner or lessee to repair a malfunctioning individual on-site wastewater disposal system on

the owner's or lessee's property before the thirtieth day after the date on which the owner or lessee is notified by the department of the malfunctioning system.

(2) The property owner or lessee shall take adequate measures as soon as practicable to abate an immediate health hazard.

(3) The property owner or lessee may be assessed a civil penalty not to exceed Five Dollars (\$5.00) for each day the individual on-site wastewater disposal system remains unrepaired after the thirty-day period specified in subsection (1) of this section.

(4) The board may assess the property owner or lessee of an individual on-site wastewater disposal system authorized pursuant to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars (\$50.00) for each day the system fails to meet the performance standards of that system after the thirty-day period specified in subsection (1) of this section.

(5) All penalties collected by the board under this section shall be deposited in the State General Fund.

(6) Appeals from the imposition of civil penalty under this section may be taken as provided in Section 41-67-29.

SOURCES: Laws, 1992, ch. 536, § 9; Laws, 1996, ch. 516, § 16; reenacted without change, Laws, 2001, ch. 578, § 16; reenacted without change, Laws, 2002, ch. 493, § 16; reenacted without change, Laws, 2003, ch. 525, § 16; reenacted without change, Laws, 2005, ch. 545, § 16; reenacted without change, Laws, 2006, ch. 391, § 15; reenacted without change, Laws, 2008, ch. 563, § 14, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

§ 41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2011].

The department or its authorized representative may enter onto property and make inspections of any individual on-site wastewater disposal system as necessary to ensure that the system is in compliance with this chapter and the rules adopted under this chapter. The department shall give reasonable notice to any property owner, lessee or occupant prior to entry onto the property. The owner, lessee, owner's representative, or occupant of the property on which the system is located shall give the department or its authorized representative reasonable access to the property at reasonable times to make necessary inspections.

SOURCES: Laws, 1992, ch. 536, § 10; Laws, 1996, ch. 516, § 17; reenacted without change, Laws, 2001, ch. 578, § 17; reenacted without change, Laws, 2002, ch. 493, § 17; reenacted without change, Laws, 2003, ch. 525, § 17; reenacted without change, Laws, 2005, ch. 545, § 17; reenacted without change, Laws, 2006, ch. 391, § 16; reenacted without change, Laws, 2008, ch. 563, § 15, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

ATTORNEY GENERAL OPINIONS

Based on the requirement set forth in Section 41-67-23 that the Department of Health inspect wastewater systems at the behest of the property owner, or his lender, coupled with the authority to charge and collect reasonable fees for

health services as set out in Section 41-3-15(4)(f), the Department of Health may recoup actual costs associated with its obligations imposed in Section 41-67-23. Thompson, April 18, 1995, A.G. Op. #95-0240.

RESEARCH REFERENCES

Am Jur. 61C **Am. Jur.** 2d, **Pollution Control** § 2057.

§ 41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2011].

(1) A person may not operate as an installer of individual on-site wastewater disposal systems unless that person is currently certified by the department. A person who installs an individual on-site wastewater disposal system on his own property for his primary residence is not considered an installer for purposes of this subsection.

(2) An installer of alternative systems or products must be a factory-trained and authorized representative. The manufacturer must furnish documentation to the department certifying the satisfactory completion of factory training and the establishment of the installer as an authorized manufacturer's representative.

(3) The board shall issue a certification to an installer if the installer:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the training program provided by the department;

(c) Pays the annual certification fee; and

(d) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(4) Each installer shall furnish proof of certification to a property owner, lessee, the owner's representative or occupant of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by that installer and to the department or its authorized representative, if requested.

(5) The department shall provide for annual renewal of certifications.

(6)(a) An installer's certification may be suspended or revoked by the board after notice and hearing if the installer violates this chapter or any rule or regulation adopted under this chapter.

(b) The installer may appeal a suspension or revocation under this section as provided by law.

(7) The department semiannually shall disseminate to the public an official list of certified installers and provide to county health departments a monthly update of the list.

(8) If any person is operating in the state as an installer without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SOURCES: Laws, 1992, ch. 536, § 11; Laws, 1996, ch. 516, § 18; reenacted and amended, Laws, 2001, ch. 578, § 18; reenacted without change, Laws, 2002, ch. 493, § 18; reenacted without change, Laws, 2003, ch. 525, § 18; reenacted without change, Laws, 2005, ch. 545, § 18; reenacted without change, Laws, 2006, ch. 391, § 17; reenacted and amended, Laws, 2008, ch. 563, § 16, eff from and after July 1, 2009.

Editor's Note — This section was reenacted without change by Laws, 2006, ch. 391, effective from and after July 1, 2006.

For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, rewriting (1), substituting "alternative systems or products" for "aerobic treatment plants or subsurface drip disposal systems" in (2), substituting "valid general business liability insurance policy" for "valid public liability insurance policy" in (3)(d), and adding (8).

§ 41-67-27. Registration required for manufacturers of individual on-site wastewater disposal systems or alternative treatment or disposal components to operate business [Repealed effective July 1, 2011].

It is unlawful for a manufacturer of an individual on-site wastewater disposal system or alternative treatment or disposal components to operate a business in or to do business in the State of Mississippi without holding a valid manufacturer's registration issued by the department.

SOURCES: Laws, 1992, ch. 536, § 12; Laws, 1996, ch. 516, § 19; reenacted without change, Laws, 2001, ch. 578, § 19; reenacted without change, Laws, 2002, ch. 493, § 19; reenacted without change, Laws, 2003, ch. 525, § 19; reenacted without change, Laws, 2005, ch. 545, § 19; reenacted without change, Laws, 2006, ch. 391, § 18; reenacted and amended, Laws, 2008, ch. 563, § 17, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, inserting "or alternative treatment or disposal components" and "manufacturer's."

§ 41-67-28. Violations; penalties and damages [Repealed effective July 1, 2011].

(1) Except as otherwise provided in this chapter, any person who shall knowingly violate this chapter or any rule or regulation or written order of the board in pursuance thereof is, upon conviction, guilty of a misdemeanor and shall be punished as provided in Section 41-3-59.

(2) Each day of a continuing violation is a separate violation.

(3)(a) In addition to all other statutory and common law rights, remedies and defenses, any person who purchases an individual on-site wastewater disposal system and suffers any ascertainable loss of money or property, real or personal, may bring an action at law in the court having jurisdiction in the county in which the installer or manufacturer has the principal place of business, where the act allegedly occurred, to recover any loss of money or damages for the loss of any property resulting from any of the following:

(i) Improper installation of an individual on-site wastewater disposal system due to faulty workmanship;

(ii) Failure of an individual on-site wastewater disposal system to operate properly due to failure to install the system in accordance with any requirements of the manufacturer or in compliance with any rules and regulations of the board; or

(iii) Failure of an individual on-site wastewater disposal system to operate properly due to defective design or construction.

(b) Nothing in this chapter shall be construed to permit any class action or suit, but every private action must be maintained in the name of and for the sole use and benefit of the individual person.

(4) A person who violates this chapter thereby causing a discharge off the property of the generator shall be liable to the party aggrieved or damaged by that violation for the actual damages and additional punitive damages equal to a maximum of twenty-five percent (25%) of the actual damages proven by the aggrieved party, to be taxed by the court where the suit is heard on an original action, by appeal or otherwise and recovered by a suit at law in any court of competent jurisdiction. In addition, the court may award the prevailing party reasonable attorney's fees and court costs. Before filing suit, the party aggrieved or damaged must give thirty (30) days' written notice of its intent to file suit to the alleged violator.

(5)(a) Any person who violates Section 41-67-6(8) may be assessed an administrative fine in the amount of Five Hundred Dollars (\$500.00) and the public water system may discontinue service to that property owner until the failure to comply with Section 41-67-6(8) has been corrected.

(b) All violators shall be given thirty (30) days' notice before any adverse action.

(c) Any violator shall have the right to appeal an adverse determination through the procedures set out in Section 41-67-29.

SOURCES: Laws, 1992, ch. 536, § 13; Laws, 1996, ch. 516, § 20; reenacted without change, Laws, 2001, ch. 578, § 20; reenacted without change,

Laws, 2002, ch. 493, § 20; reenacted without change, Laws, 2003, ch. 525, § 20; reenacted without change, Laws, 2005, ch. 545, § 20; reenacted without change, Laws, 2006, ch. 391, § 19; reenacted and amended, Laws, 2008, ch. 563, § 18, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted and amended the section by, in the second version, adding (5).

Cross References — Punitive damages, generally, see § 11-1-65.

ATTORNEY GENERAL OPINIONS

Under Sections 41-67-28 and 21-13-1, the Legislature has already placed limits on penalties for violations of municipal ordinances, therefore a municipality may not pass an ordinance making each day of

a continuing violation a separate offense, in the absence of a statute so providing. Mitchell, February 16, 1996, A.G. Op. #96-0028.

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 63 (complaint, petition, or declaration — by property owner against municipality — to enjoin issuance of building permits in subdivision with inadequate sanitary ser-

vices — to require sewage facilities — to recover damages caused by inadequate facilities).

CJS. 39A C.J.S., Health and Environment §§ 165-173.

§ 41-67-29. Appeals [Repealed effective July 1, 2011].

Any person who is aggrieved by any final decision of the board may appeal that final decision to the chancery court of the county of the situs in whole or in part of the subject matter. The appellant shall give a cost bond with sufficient sureties, payable to the state in a sum to be fixed by the board or the court and to be filed with and approved by the clerk of the court. The aggrieved party may, within thirty (30) days following a final decision of the board, petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition. Upon good cause shown the chancellor may grant the appeal with supersedeas. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in his district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact and may enter a final order or remand the matter to the board for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, but if a supersedeas is desired by the party appealing to the chancery court, that party may apply therefor to the chancellor, who shall award a writ of supersedeas, without additional bond, if in the chancellor's judgment material damage is not likely to result. If material

damage is likely to result, the chancellor shall require a supersedeas bond as deemed proper, which shall be liable to the state for any damage.

SOURCES: Laws, 1992, ch. 536, § 14; Laws, 1996, ch. 516, § 21; reenacted without change, Laws, 2001, ch. 578, § 21; reenacted without change, Laws, 2002, ch. 493, § 21; reenacted without change, Laws, 2003, ch. 525, § 21; reenacted without change, Laws, 2005, ch. 545, § 21; reenacted without change, Laws, 2006, ch. 391, § 20; reenacted without change, Laws, 2008, ch. 563, § 19, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

Amendment Notes — The 2008 amendment reenacted the section without change, effective July 1, 2009.

§ 41-67-31. Repeal of §§ 41-67-1 through 41-67-29 and §§ 41-67-33 through 41-67-39.

Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-39 shall stand repealed on July 1, 2011.

SOURCES: Laws, 1996, ch. 516, § 24; Laws, 2001, ch. 578, § 22; Laws, 2002, ch. 493, § 22; Laws, 2003, ch. 525, § 22; Laws, 2005, ch. 545, § 22; Laws, 2006, ch. 391, § 21; Laws, 2008, ch. 511, § 1; Laws, 2008, ch. 563, § 25, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 511, Laws of 2008, effective upon passage (approved May 8, 2008), amended this section. Section 25 of ch. 563, Laws of 2008, effective from and after July 1, 2009 (approved May 12, 2008), also amended this section. The amendments to these sections do not conform and do not meet the Joint Committee's criteria for integration. In this case, Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier, controls, and as set out above, this section reflects the language of Section 25 of ch. 563, Laws of 2008.

Amendment Notes — The first 2008 amendment (ch. 511) inserted "which authorize ... disposal systems" and extended the date of the repealer for §§ 41-67-1 through 41-67-29 by substituting "July 1, 2009" for "July 1, 2008."

The second 2008 amendment (ch. 563), in the second version, inserted "and §§ 41-67-33 through 41-67-39," and substituted "July 1, 2011" for "July 1, 2008."

§ 41-67-33. Procedures for conducting reviews requested by persons aggrieved by disapproval or requirements for on-site wastewater disposal system; hearing; final decision by State Health Officer [Repealed effective July 1, 2011].

(1) The department shall adopt and use procedures for conducting reviews requested by any person aggrieved by the disapproval or requirements for an on-site wastewater disposal system as provided by the department in written form under Section 41-67-6. The procedures shall include that the person may request review by submitting a written request of review to the Director of the Office of Environmental Health. The request for review shall identify the matter contested and state the person's name, mailing address and

home and daytime phone numbers. Within ten (10) business days of the receipt of the request for review, the department shall issue in writing a ruling and determination to the person and if any corrections are necessary to any form previously issued by the department, then new forms shall be submitted to the person.

(2) Any person aggrieved by the ruling issued by the Director of the Office of Environmental Health may apply for a hearing. Any hearing shall be conducted by a hearing officer designated by the department. At the hearing, the hearing officer may conduct reasonable questioning of persons who make relevant factual allegations concerning the proposal. The hearing officer shall require that all persons be sworn before they may offer any testimony at the hearing, and the hearing officer is authorized to administer oaths. Any person so choosing may be represented by counsel at the hearing. A record of the hearing shall be made, which shall consist of a transcript of all testimony received, all documents and other material introduced, the staff report and recommendation, and any other material as the hearing officer considers relevant. He shall make a recommendation within a reasonable period of time after the hearing is closed and after he has had an opportunity to review, study and analyze the evidence presented during the hearing. The completed record shall be certified to the State Health Officer, who shall consider only the record in making his decision, and shall not consider any evidence or material that is not included. All final decisions regarding the disapproval or requirements for an on-site wastewater disposal system shall be made by the State Health Officer. The State Health Officer shall make his written findings and issue his order after reviewing the record, not to exceed thirty (30) days following his receipt of the record.

SOURCES: Laws, 2008, ch. 563, § 20, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

§ 41-67-35. Certified maintenance providers; certification requirements; renewal; official list of certified maintenance providers; penalty for operating without certification [Repealed effective July 1, 2011].

(1) A person may not operate as a certified maintenance provider in this state unless that person is currently certified by the department.

(2) The department shall issue a certification to a maintenance provider if the maintenance provider:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the certified maintenance provider training program provided by the department;

(c) Pays the annual certification fee; and

(d) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars

(\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(3) Each certified maintenance provider shall furnish proof of certification to an individual before entering a contract with that individual for the continuing maintenance of an individual on-site wastewater disposal system.

(4) The department shall provide for annual renewal of certifications.

(5) The department semiannually shall disseminate to the public an official list of certified maintenance providers and provide to county health departments a monthly update of the list.

(6) If any person operates in the state as a certified maintenance provider without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SOURCES: Laws, 2008, ch. 563, § 21, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

§ 41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2011].

(1) A person may not operate as a certified professional evaluator in this state unless that person is currently certified by the department.

(2) A person must meet one (1) of the following requirements, in addition to the additional requirements set forth in other sections of this chapter and rules and regulations of the board, in order to be eligible to become a certified professional evaluator:

- (a) Be a professional engineer registered in the State of Mississippi;
- (b) Be a professional geologist registered in the State of Mississippi;
- (c) Be a professional soil classifier licensed in the State of Mississippi;

or

(d) Be a person who possesses a demonstrable, adequate and appropriate record of professional experience and/or training as determined by the department.

(3) The department shall issue a certification to a certified professional evaluator if the certified professional evaluator:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the certified professional evaluator training program provided by the department;

(c) Pays the annual certification fee; and

(d) Provides proof of having an errors and omissions policy or surety in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(4) Each certified professional evaluator shall furnish proof of certification to a property owner or the owner's representative of the property before performing a site evaluation of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by the certified professional evaluator and to the department or its authorized representative, if requested.

(5) The department shall provide for annual renewal of certifications.

(6) The department semiannually shall disseminate to the public an official list of certified professional evaluators and provide to county health departments a monthly update of the list.

(7) If any person operates in the state as a certified professional evaluator without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SOURCES: Laws, 2008, ch. 563, § 23, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

§ 41-67-39. License required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; license requirements; official list of licensed pumpers; penalty for operating without license [Repealed effective July 1, 2011].

(1) A person may not be engaged in the business of removing and disposing of the sludge and liquid waste (septage) from individual on-site wastewater disposal systems in this state unless that person has a valid license issued by the department.

(2) The department shall issue a license to a pumper if the pumper:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily complies with the requirements of his/her pumping and hauling equipment;

(c) Provides documentation of a disposal site approved by the Department of Environmental Quality, Office of Pollution Control;

(d) Pays the annual license fee; and

(e) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(3) Each pumper shall furnish proof of licensure to an individual before entering a contract with that individual for the removing and disposing of the sludge and liquid waste (septage) from an individual on-site wastewater disposal system.

(4) The department semiannually shall disseminate to the public an official list of licensed pumpers and provide to county health departments a monthly update of the list.

(5) If any person operates in the state as a licensed pumper without a license by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SOURCES: Laws, 2008, ch. 563, § 22, eff from and after July 1, 2009.

Editor's Note — For repeal of this section, see § 41-67-31.

CHAPTER 69

[Reserved]

CHAPTER 71

Home Health Agencies

SEC.

- 41-71-1. Definitions.
- 41-71-3. License required to operate home health agency.
- 41-71-5. Application for license; fee.
- 41-71-7. Terms and conditions of license; renewal.
- 41-71-9. Denial, suspension or revocation of license; notice and hearing; procedure; costs.
- 41-71-11. Appeal.
- 41-71-13. Rules, regulations and standards.
- 41-71-15. Compliance by existing agencies.
- 41-71-17. Inspections and investigations.
- 41-71-19. Confidentiality of information.
- 41-71-21. Penalty for violations; injunction.

§ 41-71-1. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals, at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

- (i) Physical, occupational or speech therapy;
- (ii) Medical social services;
- (iii) Part-time or intermittent services of a home health aide;
- (iv) Other services as approved by the licensing agency;
- (v) Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
- (vi) Medical services provided by an intern or resident in training at a hospital under a teaching program of such hospital.

(b) "Licensing agency" means the State Department of Health.

SOURCES: Laws, 1981, ch. 484, § 1; Laws, 1986, ch. 437, § 21, eff from and after July 1, 1986.

Cross References — Definition of home health agency for purposes of the Health Care Commission Law of 1979, see § 41-7-173.

Mississippi Health Care Commission, see § 41-7-175.

§ 41-71-3. License required to operate home health agency.

No person or other legal entity acting alone or in concert with others, shall establish, conduct, or maintain a home health agency without securing a license under the provisions of this chapter.

SOURCES: Laws, 1981, ch. 484, § 2, eff from and after July 1, 1981.

§ 41-71-5. Application for license; fee.

An application for a license shall be made to the licensing agency upon forms provided by the agency and shall contain such information as the agency shall require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under this chapter. A license fee of One Thousand Dollars (\$1,000.00), payable to the licensing agency, shall be submitted with each application.

SOURCES: Laws, 1981, ch. 484, § 3; Laws, 1986, ch. 500, § 24; Laws, 1998, ch. 433, § 2, eff from and after July 1, 1998.

Cross References — License renewal fee, see § 41-71-7.

§ 41-71-7. Terms and conditions of license; renewal.

Upon receipt of an application for a license and the license fee, and a determination by the licensing agency that the application is in compliance with Section 41-7-173 et seq. and in compliance with the provisions of this chapter, such license shall be issued. A license, unless suspended or revoked, shall be renewable annually upon payment by the licensee of a renewal fee of One Thousand Dollars (\$1,000.00) and approval by the licensing agency of an annual report, required to be submitted by the licensee, containing such information in such form and at such time as the licensing agency prescribes by rule or regulation. Each license shall be issued only for the home health agency and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place in the designated business office of the licensee. Each licensee shall designate, in writing, one (1) individual person as the responsible party for the conducting of the business of the home health agency with the licensing agency.

SOURCES: Laws, 1981, ch. 484, § 4; Laws, 1986, ch. 437, § 22; Laws, 1986, ch. 500, § 25; Laws, 1998, ch. 433, § 3, eff from and after July 1, 1998.

Cross References — Mississippi Health Care Certificate of Need Law of 1979, see §§ 41-7-171 through 41-7-209.

License fee, see § 41-71-5.

§ 41-71-9. Denial, suspension or revocation of license; notice and hearing; procedure; costs.

The licensing agency, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that the applicant or licensee has failed to comply with the requirements established by this chapter or the rules, regulations or

standards promulgated in furtherance of this chapter. Such notice shall be given by registered mail, or by personal service, setting forth the particular reasons for the proposed action and fixing a date of not less than thirty (30) days from the date of such mailing or such personal service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the chancery court pursuant to Section 41-71-11. The procedure governing hearings shall be in accordance with rules and regulations promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed pursuant to Section 41-71-11. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency, but any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SOURCES: Laws, 1981, ch. 484, § 5, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to

suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 41-71-11. Appeal.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision, file a notice of appeal in the chancery court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county in which the home health agency is located or to be located, and the chancery clerk shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the filing of such notice, certify to the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence, but upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify

or reverse the decision of the licensing agency and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in chancery shall apply equally to cases under this section.

SOURCES: Laws, 1981, ch. 484, § 6; Laws, 1986, ch. 437, § 23, eff from and after July 1, 1986.

Cross References — Effect of appeal on necessity of transcription of testimony, and finality of decision, see § 41-71-9.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 41-71-13. Rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to home health agencies licensed, or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by insuring adequate care of individuals receiving such services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the city of Jackson, Mississippi, entitled "Records of Rules, Regulations and Standards." The book shall be open and available to all home health agencies and the public generally at all reasonable times.

SOURCES: Laws, 1981, ch. 484, § 7, eff from and after July 1, 1981.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

ATTORNEY GENERAL OPINIONS

Title 41, Chapter 71, Section 13 of Mississippi Code of 1972 does not authorize Board of Health to require, as prerequisite to new and to continued licensure, that home health agencies provide reasonable amount of indigent care. Thompson, Jan. 14, 1994, A.G. Op. #93-1026.

§ 41-71-15. Compliance by existing agencies.

Any home health agency which is in operation on July 1, 1981, shall be given a reasonable time under the particular circumstances, not to exceed one (1) year from July 1, 1981, within which to comply with the provisions of this chapter and the rules, regulations and standards promulgated in furtherance of this chapter.

SOURCES: Laws, 1981, ch. 484, § 8, eff from and after July 1, 1981.

§ 41-71-17. Inspections and investigations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary, including visitation of patients at their places of residence.

SOURCES: Laws, 1981, ch. 484, § 9, eff from and after July 1, 1981.

Cross References — For another provision regarding obtaining information from home health agencies, see § 41-7-185.

§ 41-71-19. Confidentiality of information.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in proceedings involving the question of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of those services for home health-care agencies in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and regulations necessarily promulgated for participation in the medicare or medicaid programs.

SOURCES: Laws, 1981, ch. 484, § 10; Laws, 1984, ch. 362, § 3, eff from and after July 1, 1984.

§ 41-71-21. Penalty for violations; injunction.

Any person or persons or other entity or entities establishing, managing or operating a home health agency or conducting the business of a home health agency without the required license, or which otherwise violate any of the provisions of this chapter or the rules, regulations or standards promulgated and established in furtherance of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) for each offense. Each day of a continuing violation shall be considered a separate offense. The licensing agency may seek injunctive relief in the event it deems such action necessary after consulting with the state attorney general.

SOURCES: Laws, 1981, ch. 484, § 11, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 73

Hospital Equipment and Facilities Authority Act

SEC.

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- 41-73-3. Legislative findings; declaration of public purpose.
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- 41-73-73. State officers and agencies to cooperate with authority.
- 41-73-75. Chapter cumulative and supplemental as to powers of authority; bonds exempt from other laws governing issuance of bonds.

§ 41-73-1. Short title.

This chapter shall be known and may be cited as the Mississippi Hospital Equipment and Facilities Authority Act.

SOURCES: Laws, 1983, ch. 493, § 1; Laws, 1986, ch. 392, § 1, eff from and after July 1, 1986.

§ 41-73-3. Legislative findings; declaration of public purpose.

The Legislature hereby finds and declares that:

(1) Delivery of quality health care in Mississippi has in recent years become increasingly dependent upon sophisticated equipment and adequate, modern facilities at a time when the acquisition and financing of such equipment and facilities by health-care providers has become increasingly expensive.

(2) It is necessary that Mississippi hospitals be able to obtain the modern equipment and facilities needed to meet the needs of their medical staffs and to improve the quality of medical care provided to Mississippi citizens.

(3) The increased costs of acquiring and financing modern equipment and facilities by Mississippi hospitals is necessarily passed to the patients receiving medical care from the hospitals, resulting in higher medical bills and increased health insurance premiums.

(4) These increased costs discourage Mississippi citizens from obtaining necessary medical care.

(5) The problems set forth above cannot be remedied solely through the operation of private enterprise or efforts by individual communities, but can be alleviated through the creation of a public body corporate and politic, separate and apart from the State of Mississippi, constituting a governmental instrumentality, to be known as the Mississippi Hospital Equipment and Facilities Authority, to encourage the investment of private capital in Mississippi hospitals through the use of public financing as provided in this act for the purpose of financing hospital equipment and hospital facilities at interest rates lower than those available in the conventional credit markets.

(6) Alleviating the conditions and problems set forth above by the encouragement of private investment through a governmental body is a public purpose and use for which public money provided by the sale of revenue bonds may be borrowed, expended, advanced, loaned and granted and is hereby so declared to be such public purpose as a matter of express legislative determination. Such activities shall not be conducted for profit.

SOURCES: Laws, 1983, ch. 493, § 2; Laws, 1986, ch. 392, § 2, eff from and after July 1, 1986.

§ 41-73-5. Definitions.

When used in this act, unless the context requires a different definition, the following terms shall have the following meanings:

(a) "Act" means the Mississippi Hospital Equipment and Facilities Authority Act.

(b) "Authority" means the Mississippi Hospital Equipment and Facilities Authority created by this act and any successor to its functions.

(c) "Bonds" means bonds, notes or other evidences of indebtedness of the authority issued pursuant to this act, including refunding bonds.

(d) "Cost" as applied to hospital equipment means any and all costs of such hospital equipment and, without limiting the generality of the foregoing, shall include the following:

(i) All costs of the acquisition, repair, restoration, reconditioning, refinancing or installation of any such hospital equipment and all costs incident or related thereto;

(ii) The cost of any property interest in such hospital equipment including an option to purchase or leasehold interest;

(iii) The cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such hospital equipment; and the cost of providing or establishing a reasonable reserve fund for the payment of principal and interest on bonds;

(iv) The cost of financing charges, including premiums or prepayment penalties, if any, and interest accrued prior to the acquisition and installation or refinancing of such hospital equipment and after such acquisition and installation or refinancing and start-up costs related to hospital equipment;

(v) Any and all costs paid or incurred in connection with the financing of such hospital equipment, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory and consulting fees, expenses and disbursements; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(vi) All direct or indirect costs of the authority incurred in connection with providing such hospital equipment, including, without limitation, reasonable sums to reimburse the authority for time spent by its agents or employees with respect to providing such hospital equipment and the financing thereof; and

(vii) Any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for hospital equipment, by the authority and any program for the sale or lease of or the

making of loans for such hospital equipment to any participating hospital institution.

(e) "Cost," as applied to hospital facilities, means any and all costs of such hospital facilities and, without limiting the generality of the foregoing, shall include the following:

(i) All costs of the establishment, demolition, site development of new and rehabilitated buildings, rehabilitation, reconstruction repair, erection, building, construction, remodeling, adding to and furnishing of any such hospital facilities and all costs incident or related thereto;

(ii) The cost of acquiring any property interest in such hospital facilities including the purchase thereof, the cost of an option to purchase or the cost of any leasehold interest;

(iii) The cost of architectural, engineering, legal and related services; the cost of the preparation of plans, specifications, studies, surveys and estimates of cost and of revenue; all other expenses necessary or incident to planning, providing or determining the need for or the feasibility and practicability of such hospital facilities or the acquisition thereof; and the cost of providing or establishing a reasonable reserve fund for the payment of principal of and interest on bonds;

(iv) The cost of financing charges, including premiums or prepayment penalties, if any, and interest accrued prior to the acquisition and completion or refinancing of such hospital facilities and after such acquisition and completion or refinancing and start-up costs related to hospital facilities;

(v) Any and all costs paid or incurred in connection with the financing of such hospital facilities, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory and consulting fees, expenses and disbursement; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(vi) All direct or indirect costs of the authority incurred in connection with providing such hospital facilities, including, without limitation, reasonable sums to reimburse the authority for time spent by its agents or employees with respect to providing such hospital facilities and the financing thereof;

(vii) Any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for hospital facilities, by the authority and any program for the sale or lease of or the making of loans for such hospital facilities to any participating hospital institution; and

(viii) The cost of providing for the payment or the making provision for the payment of, by the appropriate escrowing of moneys or securities, the principal of and interest on which when due will be adequate to make such payment, any indebtedness encumbering the revenues or property of a participating hospital institution, whether such payment is to be effected by redemption of such indebtedness prior to maturity or not.

(f) "Hospital equipment" means any personal property which is found and determined by the authority to be required or necessary or helpful for medical care, research, training or teaching, any one (1) or all, in hospital facilities located in the state, irrespective of whether such property is in existence at the time of, or is to be provided after the making of, such finding. Provided further, that major medical equipment as defined in Section 41-7-173(m), shall require a certificate of need prior to the approval of the authority to contract with said hospital.

(g) "Hospital facility" or "hospital facilities" means buildings and structures of any and all types used or useful, in the discretion of the authority, for providing any types of care to the sick, wounded, infirmed, needy, mentally incompetent or elderly and shall include, without limiting the generality of the foregoing, out-patient clinics, laboratories, laundries, nurses', doctors' or interns' residences, administration buildings, office buildings, facilities for research directly involved with hospital care, maintenance, storage or utility facilities, parking lots, and garages and all necessary, useful, or related furnishings, and appurtenances and all lands necessary or convenient as a site for the foregoing.

(h) "Participating hospital institution" or "hospital institution" means a public or private corporation, association, foundation, trust, cooperative, agency, body politic, or other person or organization which provides or operates or proposes to provide or operate hospital facilities not for profit, and which, pursuant to the provisions of this act, contracts with the authority for the financing or refinancing of the lease or other acquisition of hospital equipment or hospital facilities, or both.

(i) "State" means the State of Mississippi.

The use of singular terms herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

SOURCES: Laws, 1983, ch. 493, § 3; Laws, 1986, ch. 392, § 3; Laws, 1993, ch. 349, § 1, eff from and after July 1, 1993.

Cross References — Payment of expenses as are incurred by authority in contracting with state bond advisory division of governor's office for administrative services, see § 41-73-17.

ATTORNEY GENERAL OPINIONS

There is no authority for a county to convey title to hospital real property to the board of trustees of a community hospital; however, the county may, by resolution properly adopted, join the board of trustees in the execution of a deed of trust or other lien on the real property. Lazarus, Nov. 3, 2000, A.G. Op. #2000-0613.

§ 41-73-7. Mississippi Hospital Equipment and Facilities Authority created; membership; appointment; qualifications.

(1) There is hereby created, with such duties and powers as are set forth in this act, a body politic and corporate, not a state agency, but an independent

instrumentality exercising essential public functions, to be known as the Mississippi Hospital Equipment and Facilities Authority.

(2) The authority shall be governed by seven (7) members who shall be appointed by the Governor with the advice and consent of the Senate.

(3) The members shall at all times include the following:

(a) One (1) resident of each of the three (3) Supreme Court districts in the state;

(b) One (1) certified public accountant experienced in hospital finance;

(c) One (1) possessing not less than ten (10) years' experience in hospital management and finance;

(d) One (1) banker with experience in commercial lending or one (1) investment banker with experience in municipal finance;

(e) One (1) chosen at large.

(4) All members shall be residents of the state.

SOURCES: Laws, 1983, ch. 493, § 4; Laws, 1986, ch. 392, § 4, eff from and after July 1, 1986.

Cross References — Supreme court districts, see § 9-3-1.

ATTORNEY GENERAL OPINIONS

State Health Department cannot legally offer for sale or lease licenses which have been issued to home health agencies. Cobb, Sept. 8, 1992, A.G. Op. #92-0600.

§ 41-73-9. Terms of members of authority; vacancies; removal; oath.

Three (3) members shall be appointed for an initial term of one (1) year, two (2) members shall be appointed for an initial term of two (2) years, one (1) member shall be appointed for an initial term of three (3) years and one (1) member shall be appointed for an initial term of four (4) years. All subsequent appointments shall be for terms of four (4) years. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Vacancies shall be filled by appointment of the governor, subject to the advice and consent of the senate, for the length of the unexpired term only. Any member shall be eligible for reappointment. Any member may be removed from office for incompetency, neglect of duty, or malfeasance in office by the governor after reasonable notice and a public hearing unless the same are expressly waived in writing. Each member of the authority appointed by the governor shall, before entering upon his duty, take an oath of office to administer the duties of his office faithfully and competently, and a record of such oath shall be filed in the office of the secretary of state.

SOURCES: Laws, 1983, ch. 493, § 5, eff from and after passage (approved April 11, 1983).

§ 41-73-11. Officers of authority; per diem and expenses of members.

The chairman of the authority shall be elected from the members of the authority by the vote of all such members. The members shall also elect from among their number a vice-chairman and such other officers as they may determine. They shall receive no compensation for their services but shall receive reimbursement for actual and necessary expenses and per diem in accordance with Sections 25-3-41 and 25-3-69, respectively.

SOURCES: Laws, 1983, ch. 493, § 6, eff from and after passage (approved April 11, 1983).

§ 41-73-13. Quorum; vote required for action.

The powers of the authority shall be vested in the members thereof. Four (4) members of the authority shall constitute a quorum for the transaction of business. The affirmative vote of at least four (4) members shall be necessary for any action to be taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

SOURCES: Laws, 1983, ch. 493, § 7, eff from and after passage (approved April 11, 1983).

§ 41-73-15. Regular and called meetings.

Regular meetings of the members of the authority shall be held as set forth in its rules and regulations. Additional meetings of the members of the authority shall be held at the call of the chairman or whenever any three (3) members so request.

SOURCES: Laws, 1983, ch. 493, § 8, eff from and after passage (approved April 11, 1983).

§ 41-73-17. Executive director; duties; contracting for administrative services; payment; secretary; duties.

The members of the authority may appoint an executive director and/or a secretary who shall be employees of the authority, but not members thereof, and who shall serve at the pleasure of the members and receive such compensation as shall be fixed by the members. The executive director, if appointed, shall attend the meetings of the members of the authority and shall administer, manage and direct the affairs and activities of the authority in accordance with the policies and under the control and direction of the members. The executive director shall approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant thereof, and expenses incidental to the operation of the authority. He shall perform such other duties as may be directed by the members in carrying out the

purposes of this chapter. The practices and procedures regarding administrative functions and responsibilities of the authority shall be subject to the approval and review of the director of the state bond advisory division of the governor's office. In lieu of or in addition to the appointment of an executive director, the authority may contract with the state bond advisory division of the governor's office to carry out in whole or in part the administrative functions and responsibilities of the authority, but may only pay the actual expenses incurred by such division in performing such functions and responsibilities. The expenses incurred by the authority in contracting for such administrative functions and responsibilities shall be paid by the authority as a qualified cost pursuant to Section 41-73-5(d)(vii).

The secretary shall attend the meetings of the members of the authority, shall keep a record of the proceedings of the authority, and shall maintain and be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority, and its official seal. He may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates. If an executive director and/or secretary are not appointed, the members of the authority may designate from among themselves or the authority's employees the person or persons responsible for carrying out the duties set out in this section.

SOURCES: Laws, 1983, ch. 493, § 9, eff from and after passage (approved April 11, 1983).

Cross References — State bond advisory division in office of governor, and director thereof, see §§ 7-1-401, 7-1-403.

§ 41-73-19. Additional officers, agents or employees.

The authority may employ legal counsel, technical experts and such other officers, agents and employees, permanent or temporary, as it deems necessary to carry out the efficient operation of the authority, and shall determine their qualifications, duties, compensation and terms of office. The members may delegate to one or more agents or employees of the authority such administrative duties as they deem proper.

SOURCES: Laws, 1983, ch. 493, § 10, eff from and after passage (approved April 11, 1983).

§ 41-73-21. Conflict of interest of member, employee or agent; disclosure required; effect of disclosure.

Any member, employee or agent of the authority who has, will have, or later acquires an interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of such interest in writing to the authority as soon as he has knowledge of such actual or

prospective interest. Such disclosure shall be entered upon the minutes of the authority. Upon such disclosure such member, employee or agent shall not participate in any action by the authority authorizing such transaction.

SOURCES: Laws, 1983, ch. 493, § 11, eff from and after passage (approved April 11, 1983).

§ 41-73-23. State office or position not forfeited by virtue of authority membership or service.

Notwithstanding the provisions of any other law, no officer or employee of the state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership in the authority or by reason of his providing services to such authority.

SOURCES: Laws, 1983, ch. 493, § 12, eff from and after passage (approved April 11, 1983).

Cross References — Constitutional prohibitions against holding dual offices, see Miss. Const. Art. 1, § 2 and Art. 14, § 266.

§ 41-73-25. Surety bonds of members and executive director; blanket bond authorized; conditions of bonds; costs.

Before the issuance of any bonds pursuant to this chapter, each member of the authority and the executive director, if one shall have been appointed, shall execute a surety bond in the sum of fifty thousand dollars (\$50,000.00) issued by a surety company licensed to do business in the state. To the extent any member of the authority is already covered by a bond required by state law, such member need not obtain another bond so long as the bond required by the state law is in at least the sum specified in this section and covers the member's activities for the authority. In lieu of such bonds, the chairman of the authority may execute a blanket surety bond covering each member and the executive director of the authority. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member or executive director and shall be issued by a surety company authorized to transact business in the state as surety. At all times after the issuance of any surety bonds, each member and executive director shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be borne by the authority.

SOURCES: Laws, 1983, ch. 493, § 13, eff from and after passage (approved April 11, 1983).

Cross References — Official bonds of state officers, generally, see §§ 25-1-13 et seq.

§ 41-73-27. Powers of authority.

The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including but not limited to the following:

(a) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(b) To adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this act, to regulate its affairs and to carry into effect the powers and purposes of the authority and conduct its business;

(c) To sue and be sued in its own name;

(d) To have an official seal and alter it at will;

(e) To maintain an office at such place or places within the state as it may designate;

(f) To monitor on a continuing basis the need for hospital equipment financing and hospital facilities financing at interest rates which are consistent with the needs of hospital institutions;

(g) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this act;

(h) To employ architects, engineers, attorneys, inspectors, accountants and health-care experts and financial advisors, and such other advisors, consultants and agents as may be necessary in its judgment, and to fix their compensation;

(i) To procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurers as it may deem advisable, including the power to pay premiums on any such insurance;

(j) To procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, to secure payment (i) on a loan, lease or purchase payment owed by a participating hospital institution to the authority and (ii) of any bonds issued by the authority, including the power to pay premiums on any such insurance or guarantee;

(k) To procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the authority or to secure the payment of any loan, lease or purchase payment owed by a participating hospital institution to the authority, including the power to pay the cost of obtaining such letter of credit;

(l) To receive and accept from any source aid or contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this act subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency or instrumentality of the United States of America for any purpose consistent with the provisions of this act;

(m) To provide, or cause to be provided by a participating hospital institution, by acquisition, lease, fabrication, repair, restoration, reconditioning, refinancing or installation, one or more hospital facilities located within the state or items of hospital equipment to be located within a hospital facility in the state;

(n) To lease as lessor any hospital facility or any item of hospital equipment for such rentals and upon such terms and conditions as the

authority may deem advisable and as are not in conflict with the provisions of this act;

(o) To sell for installment payments or otherwise, to option or contract for such sale, and to convey all or any part of any hospital facility or any item of hospital equipment for such price and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the provisions of this act;

(p) To make contracts and incur liabilities, borrow money at such rates of interest as the authority may determine, issue its bonds in accordance with the provisions of this act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises and income or as otherwise provided in this act;

(q) To make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing for the cost of any hospital facility or item of hospital equipment, including the retiring of any outstanding obligations with respect to such hospital facility or hospital equipment, and the reimbursement for the cost of any hospital facility or hospital equipment, purchased within two (2) years immediately preceding the date of the bond issue, made or given by any participating hospital institution for the cost of any hospital facility, hospital equipment, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the provisions of this act;

(r) To invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in this act;

(s) To purchase, receive, lease (as lessee or lessor), or otherwise acquire, own, hold, improve, use or otherwise deal in and with, hospital facilities and equipment, or any interest therein, wherever situated, as the purposes of the authority shall require;

(t) To sell, convey, mortgage, pledge, assign, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

(u) To the extent permitted under its contract with the holders of bonds of the authority, consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease or agreement of any kind to which the authority is a party; and

(v) To assist participating hospital institutions to obtain funds for any purpose by utilizing the value of the receivables of such participating hospital institutions through the making of loans secured by such receivables, by purchasing such receivables, by utilizing such receivables to secure obligations of the authority, or through any combination of the foregoing.

SOURCES: Laws, 1983, ch. 493, § 14; Laws, 1986, ch. 392, § 5; Laws, 1990, ch. 476, § 1, eff from and after passage (approved March 24, 1990).

Cross References — Power of authority to enter into agreements with entity securing payment of bonds, authorizing entity to approve participating hospitals that

can finance or refinance hospital equipment or hospital facilities with proceeds of bond issue secured, see § 41-73-31.

§ 41-73-29. Duties of authority.

The authority shall have the following duties:

(1) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in one or more of the following:

(a) Obligations of any municipality or the state or the United States of America;

(b) Obligations the principal and interest of which are guaranteed by the state or the United States of America;

(c) Obligations of any corporation wholly owned by the United States of America;

(d) Obligations of any corporation sponsored by the United States of America which are or may become eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) Certificates or any other evidence of ownership interest in obligations of or obligations unconditionally guaranteed by the United States of America or in specified portions thereof, which may consist of the principal thereof or the interest thereon;

(f) Certificates of deposit or time deposits of qualified depositories of the state as approved by the State Depository Commission, secured in such manner, if any, as the authority shall determine;

(g) Contracts for the purchase and sale of obligations of the type specified in items (a) through (e) above;

(h) Repurchase agreements secured by obligations specified in items (a) through (e) above; or

(i) Money market funds, the assets of which are required to be invested in obligations specified in items (a) through (f) above;

(j) Any investments authorized for the investment of funds of certain hospitals pursuant to Section 27-105-365.

(2) To fix, revise from time to time, charge and collect fees and other charges, as the authority determines to be reasonable, in connection with its loans, leases, sales, advances, insurance, commitments and servicing;

(3) To cooperate with and exchange services, personnel and information with any federal, state or local governmental agency;

(4) To sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority;

(5) To adopt rules and regulations which enhance the probability that hospital institutions will use for such purposes all bond proceeds which are available to finance hospital equipment and hospital facilities; and

(6) To do any act necessary or convenient to the exercise of the powers granted by this chapter or reasonably implied from it.

SOURCES: Laws, 1983, ch. 493, § 15; Laws, 1984, ch. 302, § 1; Laws, 1986, ch. 392, § 6; Laws, 2001, ch. 324, § 1, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Federal Aspects — Federal Reserve System generally, see 12 USCS §§ 221 et seq.

§ 41-73-31. Additional powers; providing hospital equipment or hospital facilities for use in hospitals in state.

In addition to the other powers and duties of the authority specified elsewhere in this act, the authority is specifically authorized to initiate a program of providing hospital equipment or hospital facilities located within the state to be operated by participating hospital institutions. In this regard, the authority shall be authorized to exercise the following powers:

(1) To establish eligibility standards for participating hospital institutions;

(2) To enter into an agreement with any entity securing the payment of bonds pursuant to Section 41-73-27(j) or (k), authorizing said entity to approve the participating hospital institutions that can finance or refinance hospital equipment or hospital facilities with proceeds from the bond issue secured by said entity;

(3) To lease to a participating hospital institution specific hospital facilities or items of hospital equipment upon such terms and conditions as the authority may deem proper, to charge and collect rents therefor, to terminate any such lease upon the failure of the lessee to comply with any of its obligations thereunder or otherwise as such lease may provide, to include in any such lease provisions that the lessee shall have the option to renew the term of the lease for such period or periods and at such rents as may be determined by the authority or to purchase any or all of the hospital facilities or hospital equipment to which such lease shall apply;

(4) To loan to a participating hospital institution under an installment purchase contract or loan agreement monies to finance or refinance the cost of specific items of hospital facilities or hospital equipment and to take back a secured or unsecured promissory note evidencing such loan and a mortgage or security interest in the hospital facilities or hospital equipment financed or refinanced with such loan, upon such terms and conditions as the authority may deem proper;

(5) To sell or otherwise dispose of any or all unneeded or obsolete hospital facilities or hospital equipment under terms and conditions as determined by the authority;

(6) To maintain, repair, replace and otherwise improve or cause to be maintained, repaired, replaced and otherwise improved any hospital facilities or hospital equipment owned by the authority;

(7) To obtain or aid in obtaining property insurance on all hospital facilities or hospital equipment owned or financed by the authority and to

enter into any agreement, contract or other instrument with respect to any such insurance to accept payment in the event of damage to or destruction of any hospital equipment;

(8) To enter into any agreement, contract or other instrument with respect to any insurance or guarantee or letter of credit, accepting payment in such manner and form as provided therein in the event of default by a participating hospital institution, and to assign any such insurance or guarantee or letter of credit as security for bonds issued by the authority; and

(9) To purchase and maintain business property insurance and business personal property insurance on all hospital-owned buildings and/or contents as required by federal law and regulations of the Federal Emergency Management Agency (FEMA) as is necessary for receiving public assistance or reimbursement for repair, reconstruction, replacement or other damage to those buildings and/or contents caused by the Hurricane Katrina Disaster of 2005 or subsequent disasters. The authority is authorized to expend funds from any available source for the purpose of obtaining and maintaining that property insurance. The authority is authorized to enter into agreements with the Department of Finance and Administration, local school districts, community/junior college districts, state institutions of higher learning, other community hospitals and/or other state agencies to pool their liabilities to participate in a group business property and/or business personal property insurance program, subject to uniform rules and regulations as may be adopted by the Department of Finance and Administration.

SOURCES: Laws, 1983, ch. 493, § 16; Laws, 1986, ch. 392, § 7; Laws, 2005, 5th Ex Sess, ch. 24, § 7, eff from and after passage (approved Oct. 24, 2005.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The Section “41-73-27(10), (11)” was changed to Section “41-73-27(j) or (k)” following “To enter into an agreement with any entity securing the payment of bonds pursuant to Section.” The Joint Committee ratified the correction at its May 31, 2006, meeting.

Cross References — Security requirements with respect to hospital equipment lease, installment purchase contract or loan agreement, see § 41-73-33.

§ 41-73-33. Security requirements with respect to hospital equipment or hospital facilities lease, installment purchase contract, or loan agreement.

The authority shall require that each participating hospital institution agree to maintain rates sufficient to assure that timely payments are made on any lease, installment purchase contract or loan agreement entered into pursuant to this act and may require any other type of security from the participating hospital institution that it deems reasonable and necessary. In addition, the authority may require that should there be a deficit in the funds

necessary to pay any expenses incurred by the authority in connection with the delivery of the bonds, the hospital institutions receiving funds from such bond issue shall provide the necessary funds to make up for such deficit on a pro rata basis as determined by the authority.

SOURCES: Laws, 1983, ch. 493, § 17; Laws, 1984, ch. 302, § 2; Laws, 1986, ch. 392, § 8, eff from and after July 1, 1986.

§ 41-73-35. Authority may issue bonds; purposes; authorization; issuance.

The authority is hereby authorized to issue, sell and deliver its bonds in accordance with the terms of this act, for any of its corporate purposes.

Bonds shall be authorized by a resolution or resolutions of the authority adopted as provided by this act; provided, that any such resolution authorizing the issuance of bonds may delegate to an officer or officers of the authority the power to issue such bonds from time to time and to fix the details of any such issues of bonds by an appropriate certificate of such authorized officer.

SOURCES: Laws, 1983, ch. 493, § 18; Laws, 1986, ch. 392, § 9, eff from and after July 1, 1986.

§ 41-73-37. Bonds; interest; terms and conditions; procedure for issuing; covenants; redemption.

(1) The bonds shall be dated, shall bear interest at such rate or rates (which rate or rates may be fixed or variable), shall mature at such time or times in either serial or term form or both not exceeding thirty (30) years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the authority; however, bonds issued to finance equipment shall mature at such time or times not exceeding the average useful life of such equipment. The bonds shall not bear a greater overall maximum interest rate to maturity than that allowed under Section 75-17-103. The bonds, including any interest coupons to be attached thereto, shall be in such form and denomination or denominations and payable at such place or places, either within the state or without the state, and may be executed or authenticated in such manner, as the authority may determine by resolution. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon book entry or in fully registered form, or any combination, or may be payable to a specific person, as the authority may determine, and provision may be made for the conversion from one form to another. The duty of conversion may be imposed upon a trustee in a trust agreement.

(2) The principal of, redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by one or more of the following: a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of hospital equipment or hospital facilities or realized from a loan made by the authority to finance or refinance in whole or in part hospital equipment or hospital facilities, revenues derived from operating hospital equipment or hospital facilities, including insurance proceeds or any other revenues provided by a participating hospital institution.

(3) The authority shall sell the bonds at such price or prices as it shall determine, at public or private sale.

(4) The bonds shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premium, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with this act, as may be found to be necessary by the authority for the most advantageous sale thereof, which may include, but not be limited to, covenants with the holders of the bonds, as to:

(a) Pledging or creating a lien on all or any part of any money or property of the authority or of any moneys held in trust or otherwise by others to secure the payment of such bonds or notes;

(b) Otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the authority;

(c) The setting aside of reserves or sinking funds and the regulation or disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of such bonds then or thereafter to be issued may be applied;

(e) Limitations on the issuance of additional bonds and on the refunding of outstanding bonds;

(f) The procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(g) The creation of special funds into which any money of the authority may be deposited;

(h) Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine, which may include any or all of the usual and customary rights, powers and duties of the trustee appointed for the holders of any issue of bonds as agreed upon by the authority;

(i) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of such default; provided, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this act; and

(j) Any other matters of like or different character which in any way affect the security and protection of the bonds and the rights of the holders thereof.

SOURCES: Laws, 1983, ch. 493, § 19; Laws, 1986, ch. 392, § 10, eff from and after July 1, 1986.

§ 41-73-39. Disposition of proceeds; administrative expenses.

The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the hospital equipment or the hospital facilities for which such bonds have been authorized or for the refunding of outstanding bonds of the authority and, at the option of the authority, for the deposit into a reserve fund or reserve funds for the bonds; provided that the authority shall be paid an amount of money equal to all of the authority's out-of-pocket expenses and costs in connection with the issuance, sale and delivery of such bonds including, without limitation, all financing, legal (including bond and underwriter's counsel), accounting, financial, advisory, blue sky, printing and other expenses and costs in issuing such bonds, including also initial fees paid to the trustee of the bond issue and to any party servicing the leases, installment purchase contracts and loan agreements for the authority, and the costs of obtaining insurance, guarantees and letters of credit securing payment of the bonds and the lease, loan and installment purchase payments, plus an amount of money equal to the compensation paid to any employee of the authority for the time such employee has spent on activities relating to the issuance, sale and delivery of such bonds, utilizing therefor money from the proceeds of the sale and delivery of bonds issued in accordance with this act. Bond proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the authority.

SOURCES: Laws, 1983, ch. 493, § 20; Laws, 1986, ch. 392, § 11, eff from and after July 1, 1986.

§ 41-73-41. Refunding bonds authorized.

The authority is authorized to issue its bonds for the purpose of refunding any bonds of the authority then outstanding. The total amount of such refunding bonds shall be an amount sufficient to effect the refunding, and may include an amount sufficient to pay (i) the principal amount of the refunded bonds, (ii) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded which need not necessarily be on the first available redemption date, (iii) any redemption premiums to be paid thereon, (iv) any reasonable expenses incurred in connection with such refunding, and (v) any other reasonable costs deemed necessary by the authority to effect the refunding. The proceeds of such refunding bonds may be applied in the manner determined by the authority and may be placed in escrow and invested, without regard to the limitations of any law to the contrary, but not inconsistent with the provisions of this chapter, in the manner and on the terms determined by the authority. All such refunding bonds shall be issued and secured and shall be subject to the provisions of this

chapter in the same manner and to the same extent as any other bonds issued pursuant to this chapter.

SOURCES: Laws, 1983, ch. 493, § 21, eff from and after passage (approved April 11, 1983).

§ 41-73-43. Trust indentures.

The bonds may be secured by a trust indenture by and between the authority and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

SOURCES: Laws, 1983, ch. 493, § 22, eff from and after passage (approved April 11, 1983).

Cross References — Bonds of authority not obligating state, see § 41-73-51.

§ 41-73-45. Contracts with bond holders; contents.

Any bond resolution or related trust agreement, trust indenture, indenture of mortgage or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to: (i) pledging or assigning the revenues generated by the hospital equipment or hospital facilities, or pledging or assigning the notes and mortgage, lease or other security given by the participating hospital institutions with respect to which such bonds are to be issued, or other specified revenues or property of the authority; (ii) the rentals, fees, interest and other amounts to be charged by the authority, the schedule of principal payments and the sums to be raised in each year thereby, and the use, investment and disposition of such sums; (iii) setting aside any reserves or sinking funds, and the regulation, investment and disposition thereof; (iv) limitations on the use of the hospital equipment or hospital facilities; (v) limitations on the purpose to which or the investments in which the proceeds of sale of any issue or bonds then or thereafter to be issued may be applied; (vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the terms upon which additional bonds may rank on a parity with, or be subordinate or

superior to, other bonds; (vii) the refunding of outstanding bonds; (viii) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given and restrictions on the individual rights of action by bondholders; (ix) acts or omissions which shall constitute a default in the duties of the authority to holders of its bonds and providing the rights and remedies of such holders in the event of default; and (x) any other matters relating to the bonds which the authority deems desirable. In addition to the foregoing, bonds of the authority may be secured by and payable from a pooling of leases or of notes and mortgages or other security instruments whereby the authority may assign its rights, as lessor, and pledge rents under two (2) or more leases of hospital equipment or hospital facilities with two (2) or more participating hospital institutions, as lessees, or assign its rights as payee or secured party and pledge the revenues under two (2) or more notes and loan agreements from two (2) or more participating hospital institutions, upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued.

SOURCES: Laws, 1983, ch. 493, § 23; Laws, 1986, ch. 392, § 12, eff from and after July 1, 1986.

Cross References — Bonds of authority not obligating state, see § 41-73-51.

§ 41-73-47. Community hospitals may contract with authority for financing or refinancing of hospital equipment or facilities; payments as operating expenses; priority; security interests in hospital facilities and equipment; maximum principal amount and time for payment.

The commissioners or board of trustees of any hospital owned or operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combination thereof, organized and existing pursuant to Section 41-13-1 et seq., are hereby authorized to enter into a lease, installment purchase contract, sale agreement or loan agreement with the authority and/or with any participating hospital institution, in connection with the financing, refinancing or receiving reimbursement for all or any part of the cost of hospital equipment or hospital facilities, or in order to sell or borrow against receivables, in accordance with the provisions of this chapter, to document any payment obligation or debt thereby acquired by executing one or more notes, bonds or other written evidences of obligation or indebtedness, to secure any such payment obligation or debt by entering into one or more security agreements, indentures or other written pledges of collateral rights or security interests in hospital equipment, hospital facilities or in the revenues of a hospital institution, and to enter into contracts in connection with guarantees and letters of credit issued to secure obligations incurred under such lease, installment purchase contract, sale agreement or loan agreement.

Any payments due under such lease, installment purchase contract, sale agreement or loan agreement, and any obligation incurred under such guarantee or letter of credit may be secured by a pledge of the revenues of the participating hospital institution and such pledge, if made, may be on a parity with or subordinate to any present or future indebtedness of the hospital or of the political subdivision or subdivisions which own the participating hospital institution, all as shall be provided in the contract between the authority and the participating hospital. If required to qualify for any program whereby such payments of the participating hospital institution or obligations of the authority backed in whole or in part by such payments will be secured or guaranteed directly or indirectly by the Federal Housing Administration, the Farmers Home Administration or any other agency or instrumentality of the United States Government, the owner or owners of the participating hospital institution may enter into one or more mortgages, deeds of trust or other instruments to grant a security interest in a hospital facility, or any part thereof, or in hospital equipment. No existing indebtedness may be refunded, refinanced or otherwise retired in advance of the due date of such indebtedness pursuant to this section unless such refunding, refinancing or retirement of such indebtedness will result in a net savings to the hospital incurring such indebtedness. Any indebtedness or liability incurred pursuant to this section shall not constitute indebtedness for the purpose of any statutory limitation of indebtedness. Except with regard to refundings or refinancings of existing indebtedness and with regard to obligations subject to unilateral termination by a hospital institution on at least an annual basis, for none of which any such consent shall be required, no payment obligation or debt shall be entered into under authority of this section unless each owner of a hospital institution first has given its written consent to the maximum principal amount of obligation or debt that may be incurred and the maximum time for payment thereof, neither of which maximums may be exceeded.

SOURCES: Laws, 1983, ch. 493, § 24; Laws, 1984, ch. 302, § 3; Laws, 1986, ch. 392, § 13; Laws, 1990, ch. 476, § 2; Laws, 1993, ch. 349, § 2, eff from and after July 1, 1993.

Editor's Note — Sections 41-13-1 through 41-13-9, referred to in this section, were repealed by Laws of 1982, ch. 395, § 6, eff from and after July 1, 1982.

ATTORNEY GENERAL OPINIONS

A board of trustees of a community hospital may participate in the same bond sale with the board of supervisors that owns the community hospital real property for the purpose of pledging the real property as collateral therefor. Hurt, May 14, 1999, A.G. Op. #99-0218.

The authority to execute deeds of trust on community hospital property applies to the county, as well as the board of trustees of the community hospital, as they are authorized to hold real estate "acting jointly or severally." Lazarus, Nov. 3, 2000, A.G. Op. #2000-0613.

§ 41-73-49. Bonds to be general obligation bonds; additional security authorized.

Except as may otherwise be expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable solely out of any revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant, contribution or guarantee from the federal government or any corporation, association, institution or person or a pledge of any money, income or revenue of the authority from any source.

SOURCES: Laws, 1983, ch. 493, § 25, eff from and after passage (approved April 11, 1983).

§ 41-73-51. Authority's bonds do not obligate state; neither faith and credit nor taxing power of state or subdivisions pledged.

No bonds issued by the authority under this chapter shall constitute a debt, liability or general obligation of the state, or a pledge of the faith and credit of the state, but shall be payable solely as provided by Sections 41-73-43 and 41-73-45. Each bond issued under this chapter shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond.

SOURCES: Laws, 1983, ch. 493, § 26, eff from and after passage (approved April 11, 1983).

§ 41-73-53. Pledges.

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

SOURCES: Laws, 1983, ch. 493, § 27, eff from and after passage (approved April 11, 1983).

§ 41-73-55. Repurchase of bonds; cancellation.

The authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the authority out of any funds available therefor, which shall thereupon be cancelled at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon.

SOURCES: Laws, 1983, ch. 493, § 28, eff from and after passage (approved April 11, 1983).

§ 41-73-57. Bonds are negotiable instruments, subject to registration provisions of bonds.

Whether or not the bonds are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

SOURCES: Laws, 1983, ch. 493, § 29, eff from and after passage (approved April 11, 1983).

§ 41-73-59. Immunity from liability.

Neither the members of the authority nor any other person executing the bonds issued under this chapter shall be subject to personal liability or accountability by reason of the issuance thereof.

SOURCES: Laws, 1983, ch. 493, § 30, eff from and after passage (approved April 11, 1983).

§ 41-73-61. Funds and accounts.

The authority may create and establish such funds and accounts as may be necessary or desirable for its purposes.

SOURCES: Laws, 1983, ch. 493, § 31, eff from and after passage (approved April 11, 1983).

§ 41-73-63. Deposits; checks; security for deposits.

All moneys of the authority, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid by checks signed by the executive director or other officers, employees or agents of the authority as the authority shall authorize. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

SOURCES: Laws, 1983, ch. 493, § 32, eff from and after passage (approved April 11, 1983).

§ 41-73-65. Payment of expenses of authority; state and political subdivisions to be held harmless.

All expenses incurred by the authority in carrying out the provisions of this chapter shall be payable solely from funds provided under this chapter,

and nothing in this chapter shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision.

SOURCES: Laws, 1983, ch. 493, § 33, eff from and after passage (approved April 11, 1983).

§ 41-73-67. Property of authority as public property; tax exemption; assets to go to state upon dissolution of authority.

All property acquired or held by the authority under this act is declared to be public property used for public and governmental purposes, and all property, income therefrom and bonds issued under this act, interest payable thereon and income derived therefrom, shall at all times be exempt from all taxes imposed by the state, any county, any municipality or any other political subdivision of the state. Upon dissolution of the authority, all assets thereof, after payment of all its indebtedness, shall inure to the benefit of the state.

SOURCES: Laws, 1983, ch. 493, § 34; Laws, 1986, ch. 392, § 14, eff from and after July 1, 1986.

§ 41-73-69. Bonds of authority as legal investments and as security for public deposits.

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries and the Mississippi Public Employees' Retirement System may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by the authority, and such bonds shall be authorized security for all public deposits; it being the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds, and that any such bonds shall be authorized security for all public deposits. However, nothing contained in this chapter with regard to legal investments shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

SOURCES: Laws, 1983, ch. 493, § 35, eff from and after passage (approved April 11, 1983).

§ 41-73-71. Annual report of authority.

The authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and both houses of the Legislature and, within thirty (30) days of the receipt thereof by the authority, a copy of the report of every external examination of the books and accounts of the authority. Each member of the Legislature shall receive a copy of any such reports by making a request for it to the chairman of the authority.

SOURCES: Laws, 1983, ch. 493, § 36; Laws, 2009, ch. 546, § 13, eff from and after passage (approved Apr. 15, 2009.)

Amendment Notes — The 2009 amendment deleted “the state auditor” following “preceding year to the Governor.”

§ 41-73-73. State officers and agencies to cooperate with authority.

All state officers and all state agencies may render such services to the authority within their respective functions as may be requested by the authority.

SOURCES: Laws, 1983, ch. 493, § 37, eff from and after passage (approved April 11, 1983).

§ 41-73-75. Chapter cumulative and supplemental as to powers of authority; bonds exempt from other laws governing issuance of bonds.

Neither Sections 41-73-1 through 41-73-73 nor anything contained in Sections 41-73-1 through 41-73-73 is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any other law of the state, and Sections 41-73-1 through 41-73-73 are cumulative to such powers. Sections 41-73-1 through 41-73-73 do and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws. The issuance of bonds under the provisions of Sections 41-73-1 through 41-73-73 need not comply with the requirements of any other state laws applicable to the issuance of bonds, notes and other obligations. Any issuance of bonds hereunder may be validated in the manner set forth in Sections 31-13-1 et seq. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in Sections 41-73-1 through 41-73-73.

SOURCES: Laws, 1983, ch. 493, § 38; Laws, 1993, ch. 349, § 3, eff from and after July 1, 1993.

CHAPTER 75

Ambulatory Surgical Facilities

SEC.

- 41-75-1. Definitions.
- 41-75-3. Purpose of chapter.
- 41-75-5. License required.
- 41-75-7. Application for license; fee.
- 41-75-9. Issuance of license; renewal and fee; transferability; posting.
- 41-75-11. Denial, suspension or revocation of license; grounds; procedure.
- 41-75-13. Promulgation of rules, regulations and standards.
- 41-75-15. Conformity with rules, regulations or standards promulgated subsequent to start of operations.
- 41-75-16. Time limitation for abortion facility to comply with rules, regulations, or minimum standards.
- 41-75-17. Investigations and inspections.
- 41-75-18. Reports by abortion facility.
- 41-75-19. Confidentiality of certain information.
- 41-75-21. Annual reports.
- 41-75-23. Appeal from denial, suspension or revocation of license; procedure.
- 41-75-25. Penalty for violation of chapter.
- 41-75-26. Abortion facility operating without license; penalty; injunctions.
- 41-75-29. Transporting patient of abortion facility to hospital; ambulance services.

§ 41-75-1. Definitions.

For the purpose of this chapter:

(a) “Ambulatory surgical facility” means a publicly or privately owned institution that is primarily organized, constructed, renovated or otherwise established for the purpose of providing elective surgical treatment of “outpatients” whose recovery, under normal and routine circumstances, will not require “inpatient” care. The facility defined in this paragraph does not include the offices of private physicians or dentists, whether practicing individually or in groups, but does include organizations or facilities primarily engaged in that outpatient surgery, whether using the name “ambulatory surgical facility” or a similar or different name. That organization or facility, if in any manner considered to be operated or owned by a hospital or a hospital holding, leasing or management company, either for profit or not for profit, is required to comply with all licensing agency ambulatory surgical licensure standards governing a “hospital affiliated” facility as adopted under Section 41-9-1 et seq., provided that the organization or facility does not intend to seek federal certification as an ambulatory surgical facility as provided for at 42 CFR, Parts 405 and 416. If the organization or facility is to be operated or owned by a hospital or a hospital holding, leasing or management company and intends to seek federal certification as an ambulatory facility, then the facility is considered to be “freestanding” and must comply with all licensing agency ambulatory surgical licensure standards governing a “freestanding” facility.

If the organization or facility is to be owned or operated by an entity or person other than a hospital or hospital holding, leasing or management

company, then the organization or facility must comply with all licensing agency ambulatory surgical facility standards governing a “freestanding” facility.

(b) “Hospital affiliated” ambulatory surgical facility means a separate and distinct organized unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county in which the hospital is located, for the primary purpose of performing ambulatory surgery procedures. The facility is not required to be separately licensed under this chapter and may operate under the hospital’s license in compliance with all applicable requirements of Section 41-9-1 et seq.

(c) “Freestanding” ambulatory surgical facility means a separate and distinct facility or a separate and distinct organized unit of a hospital owned, leased, rented or utilized by a hospital or other persons for the primary purpose of performing ambulatory surgery procedures. The facility must be separately licensed as defined in this section and must comply with all licensing standards promulgated by the licensing agency under this chapter regarding a “freestanding” ambulatory surgical facility. Further, the facility must be a separate, identifiable entity and must be physically, administratively and financially independent and distinct from other operations of any other health facility, and shall maintain a separate organized medical and administrative staff. Furthermore, once licensed as a “freestanding” ambulatory surgical facility, the facility shall not become a component of any other health facility without securing a certificate of need to do that.

(d) “Ambulatory surgery” means surgical procedures that are more complex than office procedures performed under local anesthesia, but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results. General anesthesia is used in most cases. The patient must arrive at the facility and expect to be discharged on the same day. Ambulatory surgery shall only be performed by physicians or dentists licensed to practice in the State of Mississippi.

(e) “Abortion” means the use or prescription of any instrument, medicine, drug or any other substances or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus. Abortion procedures after the first trimester shall only be performed at a Level I abortion facility or an ambulatory surgical facility or hospital licensed to perform that service.

(f) “Abortion facility” means a facility operating substantially for the purpose of performing abortions and is a separate identifiable legal entity from any other health-care facility. Abortions shall only be performed by physicians licensed to practice in the State of Mississippi. The term “abortion facility” includes physicians’ offices that are used substantially for the purpose of performing abortions. An abortion facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

(i) The abortion facility is a provider for performing ten (10) or more abortion procedures per calendar month during any month of a calendar year, or one hundred (100) or more in a calendar year.

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing ten (10) or more abortion procedures, or performing a number of abortion procedures that would be equivalent to ten (10) procedures per month, if the facility were operating twenty (20) or more days per calendar month, in any month of a calendar year.

(iii) The abortion facility holds itself out to the public as an abortion provider by advertising by any public means, such as newspaper, telephone directory, magazine or electronic media, that it performs abortions.

(iv) The facility applies to the licensing agency for licensure as an abortion facility.

(g) "Licensing agency" means the State Department of Health.

(h) "Operating" an abortion facility means that the facility is open for any period of time during a day and has on site at the facility or on call a physician licensed to practice in the State of Mississippi available to provide abortions.

An abortion facility may apply to be licensed as a Level I facility or a Level II facility by the licensing agency. Level II abortion facilities shall be required to meet minimum standards for abortion facilities as established by the licensing agency. Level I abortion facilities shall be required to meet minimum standards for abortion facilities and minimum standards for ambulatory surgical facilities as established by the licensing agency.

Any abortion facility that begins operation after June 30, 1996, shall not be located within fifteen hundred (1500) feet from the property on which any church, school or kindergarten is located. An abortion facility shall not be in violation of this paragraph if it is in compliance with this paragraph on the date it begins operation and the property on which a church, school or kindergarten is located is later within fifteen hundred (1500) feet from the facility.

SOURCES: Laws, 1983, ch. 433, § 1; Laws, 1984, ch. 430; Laws, 1986, ch. 437, § 24; Laws, 1991, ch. 301, § 1; Laws, 1996, ch. 442, § 3; Laws, 2004, ch. 584, § 1; Laws, 2005, ch. 478, § 1; Laws, 2006, ch. 506, § 1, eff from and after June 30, 2006.

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Cross References — Certificates of need, see §§ 41-7-173 et seq.

Abolition of health care commission, see §§ 41-7-175 et seq.

JUDICIAL DECISIONS

1. Constitutionality.

Amendment to Miss. Code Ann. § 41-75-1 (2004), requiring licensure as an ambulatory surgery facility for second tri-

mester abortions, effectively made abortions after first trimester unavailable to women in Mississippi; it was a substantial obstacle to a woman's choice and

would likely not survive Fourteenth Amendment scrutiny, thus, a preliminary injunction issued. Jackson Womens Health Org. v. Amy, 330 F. Supp. 2d 820 (S.D. Miss. 2004).

RESEARCH REFERENCES

Practice References. AHLA Ambulatory Surgery Centers; Legal and Regulatory Issues (AHLA).

§ 41-75-3. Purpose of chapter.

The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of ambulatory surgical facilities and abortion facilities which will ensure safe, sanitary, and reasonably adequate care of individuals in such facilities.

SOURCES: Laws, 1983, ch. 433, § 2; Laws, 1991, ch. 301, § 2, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-5. License required.

No person as defined in Section 41-7-173, of the Mississippi Code of 1972, acting severally or jointly with any other person, shall establish, conduct, operate or maintain an ambulatory surgical facility or an abortion facility in this state without a license under this chapter.

SOURCES: Laws, 1983, ch. 433, § 3; Laws, 1991, ch. 301, § 3, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-7. Application for license; fee.

An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license shall be accompanied by a

license fee of Three Thousand Dollars (\$3,000.00), which shall be paid to the licensing agency.

SOURCES: Laws, 1983, ch. 433, § 4; Laws, 1986, ch. 500, § 26; Laws, 1998, ch. 433, § 4, eff from and after July 1, 1998.

§ 41-75-9. Issuance of license; renewal and fee; transferability; posting.

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq. where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Three Thousand Dollars (\$3,000.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency requires. Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

SOURCES: Laws, 1983, ch. 433 § 5; Laws, 1986, ch. 500, § 27; Laws, 1998, ch. 433, § 5, eff from and after July 1, 1998.

§ 41-75-11. Denial, suspension or revocation of license; grounds; procedure.

The licensing agency after notice and opportunity for a hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty (30) day period, appeals the decision to the chancery court in the county in which such facility is located in the manner prescribed in Section 43-11-23, Mississippi Code of 1972. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed

pursuant to Section 43-11-23, Mississippi Code of 1972. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SOURCES: Laws, 1983, ch. 433, § 6, eff from and after July 1, 1983.

Cross References — Compensation of witnesses in chancery court, see § 25-7-47.

§ 41-75-13. Promulgation of rules, regulations and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to ambulatory surgical facilities and abortion facilities licensed, or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving services from such facilities. The licensing agency also shall adopt, amend, promulgate and enforce rules, regulations and standards with respect to the enforcement of the informed consent requirements of Sections 41-41-31 through 41-41-39 at abortion facilities. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules and Regulations for Operation of Ambulatory Surgical Facilities and Abortion Facilities." The book shall be open and available to all ambulatory surgical facilities and abortion facilities and the public during regular business hours.

SOURCES: Laws, 1983, ch. 433, § 7; Laws, 1986, ch. 437, § 25; Laws, 1991, ch. 301, § 4; Laws, 1996, ch. 442, § 4, eff from and after July 1, 1996.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Cross References — Requirement for public access to public records, see §§ 25-61-1 et seq.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Abortion, Form 3.1 (Complaint, petition, or declaration — gynecologist's prescription of drug to pregnant woman —

forcing pregnant woman to choice of submitting to abortion or of risking birth of congenitally defective child).

§ 41-75-15. Conformity with rules, regulations or standards promulgated subsequent to start of operations.

Any ambulatory surgical facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date such are duly adopted, within which to comply with such rules and regulations and minimum standards.

SOURCES: Laws, 1983, ch. 433, § 8, eff from and after July 1, 1983.

Cross References — Promulgation of rules, regulations and standards, see § 41-75-13.

§ 41-75-16. Time limitation for abortion facility to comply with rules, regulations, or minimum standards.

Any abortion facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed six (6) months from the date such are duly adopted, within which to comply with such rules and regulations and minimum standards.

SOURCES: Laws, 1991, ch. 301, § 5, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-17. Investigations and inspections.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary.

SOURCES: Laws, 1983, ch. 433, § 9, eff from and after July 1, 1983.

§ 41-75-18. Reports by abortion facility.

Each abortion facility shall report monthly to the State Department of Health such information as may be required by the department in its rules and regulations for each abortion performed by such facility.

SOURCES: Laws, 1991, ch. 301, § 6, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

§ 41-75-19. Confidentiality of certain information.

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure.

SOURCES: Laws, 1983, ch. 433, § 10, eff from and after July 1, 1983.

Cross References — Limitation of public access to public records protected by law, see § 25-61-11.

§ 41-75-21. Annual reports.

The licensing agency shall prepare and publish an annual report of its activities and operations under this chapter. Copies of such publications shall be available in the office of the licensing agency and in the office of the Secretary of State, in compliance with Sections 25-43-7 and 25-43-11, Mississippi Code of 1972. A reasonable number of such publication(s) shall be available in the office of the licensing agency to be furnished to persons requesting, for a nominal fee.

SOURCES: Laws, 1983, ch. 433, § 11; Laws, 1986, ch. 437, § 26, eff from and after July 1, 1986.

Editor's Note — Sections 25-43-7 and 25-43-11, referred to in this section, were part of the former Administrative Procedures Law. Chapter 304, Laws of 2003, effective from and after July 1, 2005, repealed the former Administrative Procedures Law and enacted a new version of the Administrative Procedures Act, which is codified as §§ 25-43-1.101 et seq.

Section 25-43-1.101(3) provides that any reference to §§ 25-43-1 et seq., shall be deemed to mean and refer to §§ 25-43-1.101 et seq.

Cross References — Public access to public records generally, see §§ 25-61-1 et seq.

§ 41-75-23. Appeal from denial, suspension or revocation of license; procedure.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing, may within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of appeal to the chancery court of the First Judicial District of Hinds County or in the chancery court of the county in which the institution is located or proposed to be located. Such appeal shall state briefly the nature of the proceedings before the licensing agency and shall specify the order complained of. Any person or entity whose rights may be materially affected by the action of the licensing agency may appear and become a party, or the court may, upon motion, order that any such person or entity be joined as a necessary party. Upon filing of the appeal, the clerk of the chancery court shall serve notice on the licensing agency, whereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow from the service of such notice, certify with the court a copy of the record and decision, including

the transcript of the hearings on which the decision is based. No new or additional evidence shall be introduced in court; the case shall be determined upon the record certified to the court. The court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the licensing agency for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order may not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the licensing agency is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the licensing agency or violates any vested constitutional rights of any party involved in the appeal. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder. Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

SOURCES: Laws, 1983, ch. 433, § 12; Laws, 1986, ch. 437, § 27, eff from and after July 1, 1986.

§ 41-75-25. Penalty for violation of chapter.

Any person or persons or other entity or entities establishing, managing or operating an ambulatory surgical facility or conducting the business of an ambulatory surgical facility without the required license, or which otherwise violate any of the provisions of this chapter of the "Mississippi Health Care Commission Law of 1979," as amended, or the rules, regulations or standards promulgated in furtherance of any law in which the commission has authority therefor shall be subject to the penalties and sanctions of Section 41-7-209, Mississippi Code of 1972.

SOURCES: Laws, 1983, ch. 433, § 13, eff from and after July 1, 1983.

Editor's Note — The "Mississippi Health Care Commission Law of 1979", referred to in this section 15, Laws of 1979, ch. 451, which appears as §§ 41-7-171 et seq.

§ 41-75-26. Abortion facility operating without license; penalty; injunctions.

(1) Any person or persons or other entity or entities establishing, managing or operating an abortion facility or conducting the business of an abortion facility without the required license, or which otherwise violate any provision of this chapter regarding abortion facilities or the rules, regulations and standards promulgated in furtherance thereof shall be subject to revocation of the license of the abortion facility or nonlicensure of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion

facilities or of the rules, regulations and standards promulgated in furtherance thereof by intent, fraud, deceit, unlawful design, willful and/or deliberate misrepresentation, or by careless, negligent or incautious disregard for such statutes or rules, regulations and standards, either by persons acting individually or in concert with others, shall constitute a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) for each such offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of any such violation shall be in any county of the state wherein any such violation, or portion thereof, occurred.

(2) The Attorney General, upon certification by the executive director of the licensing agency, shall seek injunctive relief in a court of proper jurisdiction to prevent violations of the provisions of this chapter regarding abortion facilities or the rules, regulations and standards promulgated in furtherance thereof in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of any such violation.

SOURCES: Laws, 1991, ch. 301, § 7, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Health and Human Service regulations limiting ability of Federal Title X fund recipients to engage to abortion related activities were permissible construction of Title X, did not impose viewpoint-discriminatory conditions on government subsidy so as to violate First Amendment free speech rights of either private health care organizations that received Title X funds, their staffs, or their patients, and did not violate women's rights under due process clause of Fifth Amendment. *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991), overruled on other grounds, *Planned Parenthood v. Miller*, 63 F.3d 1452 (8th Cir. S.D. 1995).

State statute requiring that all second trimester abortions be performed in general acute care facilities is unconstitutional, since it unreasonably infringes upon women's constitutional right to obtain abortion; however, requirements that pathology report be made, that minor secure parental or judicial consent, and that second physician be present are constitutional. *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 103 S. Ct. 2517, 76 L. Ed. 2d 733 (1983).

State requirement that second trimester abortions be performed in licensed clinics is constitutional. *Simopoulos v. Virginia*, 462 U.S. 506, 103 S. Ct. 2532, 76 L. Ed. 2d 755 (1983).

§ 41-75-29. Transporting patient of abortion facility to hospital; ambulance services.

(1) If unforeseen complications arise prior to or during an abortion facility procedure, the patient shall be transferred to the nearest hospital.

(2) Each abortion facility shall make arrangements with a local ambulance service, duly licensed by the State of Mississippi, for the transport of emergency patients to a hospital and provide documentation to the department of proof of such arrangements.

SOURCES: Laws, 1991, ch. 301, § 8, eff from and after July 1, 1990 (Governor's veto overridden by Legislature on January 17, 1991).

Editor's Note — Laws of 1991, ch. 301, § 9, provides as follows:

"SECTION 9. The provisions of this act shall not be construed to repeal or modify any provision of Mississippi law not expressly altered by this act, and furthermore does not establish a state policy that condones abortion."

CHAPTER 77

Licensing of Birthing Centers

SEC.

- 41-77-1. Definitions.
- 41-77-3. Declaration of purpose.
- 41-77-5. Requirement of license.
- 41-77-7. Requirement of agreement with hospital.
- 41-77-9. Application for license; fee.
- 41-77-11. Rules, regulations, and standards.
- 41-77-13. Disclosure of information.
- 41-77-15. Time for compliance by centers already in operation.
- 41-77-17. Inspections and investigations.
- 41-77-19. Denial, suspension, or revocation of license; procedures.
- 41-77-21. Appeal procedures.
- 41-77-23. Penalties for violations.
- 41-77-25. Issuance, renewal, and posting of licenses.

§ 41-77-1. Definitions.

For purposes of this chapter:

(a) "Birthing center" shall mean a publicly or privately owned facility, place or institution constructed, renovated, leased or otherwise established where nonemergency births are planned to occur away from the mother's usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through a formal risk scoring examination. Care provided in a birthing center shall be provided by a licensed physician, or certified nurse midwife, and a registered nurse. Services provided in a birthing center shall be limited in the following manner: (i) surgical services shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair, and shall not include operative obstetrics or caesarean sections; (ii) labor shall not be inhibited, stimulated or augmented with chemical agents during the first or second stage of labor; (iii) systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy repair may be performed. General and conductive anesthesia shall not be administered at birthing centers; (iv) patients shall not remain in the facility in excess of twenty-four (24) hours.

Hospitals are excluded from the definition of a "birthing center" unless they choose to and are qualified to designate a portion or part of the hospital as a birthing center, and nothing herein shall be construed as referring to the usual service provided the pregnant female in the obstetric-gynecology service of an acute care hospital. Such facility or center, as heretofore stated, shall include the offices of physicians in private practice alone or in groups of two (2) or more; and such facility or center rendering service to pregnant female persons, as stated heretofore and by the rules and regulations promulgated by the licensing agency in furtherance thereof, shall be deemed to be a "birthing center" whether using a similar or different name. Such

center or facility if in any manner is deemed to be or considered to be operated or owned by a hospital or a hospital holding leasing or management company, for profit or not for profit, is required to comply with all birthing center standards governing a "hospital affiliated" birthing center as adopted by the licensing authority.

(b) "Hospital affiliated" birthing center shall mean a separate and distinct unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county as the hospital for the purpose of providing the service of a "birthing center." Such center or facility is not required to be licensed separately, and may operate under the license issued to the hospital if it is in compliance with Section 41-9-1 et seq., where applicable, and the rules and regulations promulgated by the licensing agency in furtherance thereof.

(c) "Freestanding" birthing center shall mean a separate and distinct facility or center or a separate and distinct organized unit of a hospital or other defined persons (Section 41-7-173(p)) for the purpose of performing the service of a "birthing center." Such facility or center must be separately licensed and must comply with all licensing standards promulgated by the licensing agency by virtue of this chapter. Further, such facility or center must be a separate, identifiable entity and must be physically, administratively and financially independent from other operations of any hospital or other health-care facility or service and shall maintain a separate and required staff, including administrative staff. Further, any "birthing center" licensed as a "freestanding" center shall not become a component of any hospital or other health-care facility without securing a "certificate of need."

(d) "Licensing agency" shall mean the State Department of Health.

SOURCES: Laws, 1985, ch. 503, § 1; Laws, 1986, ch. 437, § 28, eff from and after July 1, 1986.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in clause (iii) of paragraph (a). The word "pudental" was changed to "pudendal". The Joint Committee ratified the correction at its December 3, 1996, meeting.

Cross References — Mississippi Health Care Commission generally, see §§ 41-7-171 et seq.

§ 41-77-3. Declaration of purpose.

The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of "birthing centers" which will ensure safe, sanitary and reasonably adequate care of individuals in such institutions.

SOURCES: Laws, 1985, ch. 503, § 2, eff from and after July 1, 1985.

§ 41-77-5. Requirement of license.

No person as defined in Section 41-7-173(p), Mississippi Code of 1972, acting severally or jointly with any other person, shall establish, conduct or maintain a "birthing center" in this state without a license under this chapter.

SOURCES: Laws, 1985, ch. 503, § 3, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 25, 26. **CJS.** 39A C.J.S., Health & Environment § 65.

51 Am. Jur. 2d, Licenses and Permits §§ 10 et seq., 69 et seq.

§ 41-77-7. Requirement of agreement with hospital.

No license shall be issued to a "birthing center" until such "birthing center" shall have obtained a written agreement with a hospital which has an organized obstetrical service and provides such service on a continuing basis, stating that said hospital agrees to accept from the "birthing center" such cases as may need to be referred for whatever reason from the "birthing center".

SOURCES: Laws, 1985, ch. 503, § 4, eff from and after July 1, 1985.

§ 41-77-9. Application for license; fee.

An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license shall be accompanied by a license fee of One Thousand Dollars (\$1,000.00) which shall be paid to the licensing agency.

SOURCES: Laws, 1985, ch. 503, § 5; Laws, 1986, ch. 500, § 28; Laws, 1998, ch. 433, § 6, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 64 et seq. **CJS.** 53 C.J.S., Licenses §§ 101-114.

§ 41-77-11. Rules, regulations, and standards.

The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to "birthing centers," licensed or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving such

services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., Mississippi Code of 1972, and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the City of Jackson, Mississippi, entitled "Record of Rules, Regulations and Standards." The book shall be open and available to all "birthing centers" and the public during regular business hours.

SOURCES: Laws, 1985, ch. 503, § 6, eff from and after July 1, 1985.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 35
et seq.

§ 41-77-13. Disclosure of information.

Information received by the licensing agency through filed reports, inspection or as otherwise authorized under this chapter shall not be disclosed publicly in such manner as to identify individuals except in a proceeding involving the questions of licensure.

SOURCES: Laws, 1985, ch. 503, § 7, eff from and after July 1, 1985.

§ 41-77-15. Time for compliance by centers already in operation.

Any "birthing center" which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date such are duly adopted, with which to comply with such rules and regulations and minimum standards.

SOURCES: Laws, 1985, ch. 503, § 8, eff from and after July 1, 1985.

§ 41-77-17. Inspections and investigations.

The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary.

SOURCES: Laws, 1985, ch. 503, § 9, eff from and after July 1, 1985.

§ 41-77-19. Denial, suspension, or revocation of license; procedures.

The licensing agency, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend or revoke a license in any

case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision in the manner prescribed in Section 43-11-23, Mississippi Code of 1972. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the licensing agency. Testimony shall be recorded but not be transcribed unless the decision is appealed in accordance with said Section 43-11-23. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency, provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SOURCES: Laws, 1985, ch. 503, § 10, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 88 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (Complaint, petition, or declaration — by license holder — against administrative agency

— to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 53 C.J.S., Licenses §§ 121-124.

§ 41-77-21. Appeal procedures.

Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of appeal to the Chancery Court of the First Judicial District of Hinds County or in the chancery court of the county in which the institution is located or proposed to be located. If such notice of appeal is filed, it shall comply with Section 41-7-201(2), (3) and (4), Mississippi Code of 1972. Thereupon, the licensing agency shall, within the time and in the manner prescribed in Section 41-7-201(2), certify and file with the court a copy of the record and decision, including the transcript of the hearings in which the decision is based. No new or additional evidence shall be introduced in court; the case shall be determined upon the record certified to the court. The court may sustain or dismiss

the appeal, modify or vacate the order complained of in whole or in part, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the licensing agency for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order may not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the licensing agency is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the licensing agency, or violates any vested constitutional rights of any party involved in the appeal. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in chancery shall apply equally to cases hereunder. Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

SOURCES: Laws, 1985, ch. 503, § 11, eff from and after July 1, 1985.

Editor's Note — This section contains a reference to "Section 41-7-201(2), (3), and (4)." There are no subsections (3) and (4) in § 41-7-201.

Cross References — Practice and procedure in the chancery court and in the Supreme Court, see § 11-5-1 et seq.

§ 41-77-23. Penalties for violations.

Any person or persons or other entity or entities establishing, managing or operating a "birthing center" or conducting the business of a "birthing center" without the required license, or which otherwise violate any of the provisions of this chapter or the Mississippi Health Care Commission Law of 1979, as amended, or the rules, regulations or standards promulgated in furtherance of any law in which the commission has authority therefor, shall be subject to the penalties and sanctions of Section 41-7-209, Mississippi Code of 1972.

SOURCES: Laws, 1985, ch. 503, § 12, eff from and after July 1, 1985.

Cross References — Mississippi Health Care Commission Law of 1979, see §§ 41-7-171 et seq.

"Birthing center" defined, see § 41-77-1.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 106 et seq. **CJS.** 53 C.J.S., Licenses §§ 121-132.

§ 41-77-25. Issuance, renewal, and posting of licenses.

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of

Section 41-7-173, et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Three Hundred Dollars (\$300.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency requires. Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

SOURCES: Laws, 1985, ch. 503, § 13; Laws, 1986, ch. 500, § 29, eff from and after July 1, 1986.

CHAPTER 79

Health Problems of School Children

| | |
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| School Nurse Intervention Program | 41-79-1 |
| Head Lice | 41-79-21 |
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SCHOOL NURSE INTERVENTION PROGRAM

SEC.

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| 41-79-1. | Legislative findings. |
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| 41-79-5. | School nurse intervention program. |

§ 41-79-1. Legislative findings.

The Legislature finds that health problems often are not prevented or detected in early stages because so many of the state's children are not in a health-care system. A school nurse can provide the preventive health services needed to facilitate the student's optimal physical, mental, emotional and social growth and development, as well as to help prevent serious health problems which would be more difficult and costly to address later.

SOURCES: Laws, 1987, ch. 505 § 1; reenacted, 1988, ch. 512, § 1, eff from and after June 30, 1988.

Editor's Note — Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 507, § 4, so as to remove the repeal provision.

Cross References — Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

§ 41-79-3. Authorization to implement regulations.

The State Board of Health, after consultation with the State Board of Education, is authorized to issue regulations to implement the provisions of this chapter.

SOURCES: Laws, 1987, ch. 505 § 2; reenacted, 1988, ch. 512, § 2, eff from and after June 30, 1988.

Editor's Note — Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 507, § 4, so as to remove the repeal provision.

Cross References — Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

§ 41-79-5. School nurse intervention program.

(1) There is hereby established within the State Department of Health a school nurse intervention program, available to all public school districts in the state.

(2) By the school year 1998-1999, each public school district shall have employed a school nurse, to be known as a Health Service Coordinator, pursuant to the school nurse intervention program prescribed under this section. The school nurse intervention program shall offer any of the following specific preventive services, and other additional services appropriate to each grade level and the age and maturity of the pupils:

(a) Reproductive health education and referral to prevent teen pregnancy and sexually transmitted diseases, which education shall include abstinence;

(b) Child abuse and neglect identification;

(c) Hearing and vision screening to detect problems which can lead to serious sensory losses and behavioral and academic problems;

(d) Alcohol, tobacco and drug abuse education to reduce abuse of these substances;

(e) Scoliosis screening to detect this condition so that costly and painful surgery and lifelong disability can be prevented;

(f) Coordination of services for handicapped children to ensure that these children receive appropriate medical assistance and are able to remain in public school;

(g) Nutrition education and counseling to prevent obesity and/or other eating disorders which may lead to life-threatening conditions, for example, hypertension;

(h) Early detection and treatment of head lice to prevent the spread of the parasite and to reduce absenteeism;

(i) Emergency treatment of injury and illness to include controlling bleeding, managing fractures, bruises or contusions and cardiopulmonary resuscitation (CPR);

(j) Applying appropriate theory as the basis for decision making in nursing practice;

(k) Establishing and maintaining a comprehensive school health program;

(l) Developing individualized health plans;

(m) Assessing, planning, implementing and evaluating programs and other school health activities, in collaboration with other professionals;

(n) Providing health education to assist students, families and groups to achieve optimal levels of wellness;

(o) Participating in peer review and other means of evaluation to assure quality of nursing care provided for students and assuming responsibility for continuing education and professional development for self while contributing to the professional growth of others;

(p) Participating with other key members of the community responsible for assessing, planning, implementing and evaluating school health services

and community services that include the broad continuum or promotion of primary, secondary and tertiary prevention; and

(q) Contributing to nursing and school health through innovations in theory and practice and participation in research.

(3) Public school nurses shall be specifically prohibited from providing abortion counseling to any student or referring any student to abortion counseling or abortion clinics. Any violation of this subsection shall disqualify the school district employing such public school nurse from receiving any state administered funds under this section.

(4) Repealed.

(5) Beginning with the 1997-1998 school year, to the extent that federal or state funds are available therefor and pursuant to appropriation therefor by the Legislature, in addition to the school nurse intervention program funds administered under subsection (4), the State Department of Health shall establish and implement a Prevention of Teen Pregnancy Pilot Program to be located in the public school districts with the highest numbers of teen pregnancies. The Teen Pregnancy Pilot Program shall provide the following education services directly through public school nurses in the pilot school districts: health education sessions in local schools, where contracted for or invited to provide, which target issues including reproductive health, teen pregnancy prevention and sexually transmitted diseases, including syphilis, HIV and AIDS. When these services are provided by a school nurse, training and counseling on abstinence shall be included.

(6) In addition to the school nurse intervention program funds administered under subsection (4) and the Teen Pregnancy Pilot Program funds administered under subsection (5), to the extent that federal or state funds are available therefor and pursuant to appropriation therefor by the Legislature, the State Department of Health shall establish and implement an Abstinence Education Pilot Program to provide abstinence education, mentoring, counseling and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out of wedlock. Such abstinence education services shall be provided by the State Department of Health through its clinics, public health nurses, school nurses and through contracts with rural and community health centers in order to reach a larger number of targeted clients. For purposes of this subsection, the term "abstinence education" means an educational or motivational program which:

(a) Has as its exclusive purpose, teaching the social, psychological and health gains to be realized by abstaining from sexual activity;

(b) Teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children;

(c) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases and other associated health problems;

(d) Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(e) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(f) Teaches that bearing children out of wedlock is likely to have harmful consequences for the child, the child's parents and society;

(g) Teaches young people how to reject sexual advances and how alcohol and drug use increase vulnerability to sexual advances; and

(h) Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

(7) Beginning with the 1998-1999 school year and pursuant to appropriation therefor by the Legislature, in addition to other funds allotted under the minimum education program, each school district shall be allotted an additional teacher unit per every one hundred (100) teacher units, for the purpose of employing qualified public school nurses in such school district, which in no event shall be less than one (1) teacher unit per school district, for such purpose. In the event the Legislature provides less funds than the total state funds needed for the public school nurse allotment, those school districts with fewer teacher units shall be the first funded for such purpose, to the extent of funds available.

(8) Prior to the 1998-1999 school year, nursing staff assigned to the program shall be employed through the local county health department and shall be subject to the supervision of the State Department of Health with input from local school officials. Local county health departments may contract with any comprehensive private primary health-care facilities within their county to employ and utilize additional nursing staff. Beginning with the 1998-1999 school year, nursing staff assigned to the program shall be employed by the local school district and shall be designated as "health service coordinators," and shall be required to possess a bachelor's degree in nursing as a minimum qualification.

(9) Upon each student's enrollment, the parent or guardian shall be provided with information regarding the scope of the school nurse intervention program. The parent or guardian may provide the school administration with a written statement refusing all or any part of the nursing service. No child shall be required to undergo hearing and vision or scoliosis screening or any other physical examination or tests whose parent objects thereto on the grounds such screening, physical examination or tests are contrary to his sincerely held religious beliefs.

(10) A consent form for reproductive health education shall be sent to the parent or guardian of each student upon his enrollment. If a response from the parent or guardian is not received within seven (7) days after the consent form is sent, the school shall send a letter to the student's home notifying the parent or guardian of the consent form. If the parent or guardian fails to respond to the letter within ten (10) days after it is sent, then the school principal shall be authorized to allow the student to receive reproductive health education. Reproductive health education shall include the teaching of total abstinence from premarital sex and, wherever practicable, reproductive health education should be taught in classes divided according to gender. All materials used in the reproductive health education program shall be placed in a convenient and easily accessible location for parental inspection. School nurses shall not

dispense birth control pills or contraceptive devices in the school. Dispensing of such shall be the responsibility of the State Department of Health on a referral basis only.

(11) No provision of this section shall be construed as prohibiting local school districts from accepting financial assistance of any type from the State of Mississippi or any other governmental entity, or any contribution, donation, gift, decree or bequest from any source which may be utilized for the maintenance or implementation of a school nurse intervention program in a public school system of this state.

SOURCES: Laws, 1987, ch. 505 § 3; reenacted and amended, 1988, ch. 512, § 3; Laws, 1994, ch. 632, § 3; Laws, 1997, ch. 316, § 26; Laws, 1999, ch. 373, § 1; Laws, 2000, ch. 390, § 1; Laws, 2000, ch. 423, § 1, eff from and after July 1, 2000.

Joint Legislative Committee Note — Section 1 of ch. 390, Laws of 2000, effective from and after July 1, 2000 (approved March 17, 2000), amended this section. Section 1 of ch. 423, Laws of 2000, effective from and after July 1, 2000 (approved March 18, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 423, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1987, ch. 505, § 4, provided for the automatic repeal of this section on July 1, 1988. Subsequently, Laws of 1988, ch. 512, § 4, amended Laws of 1987, ch. 505, § 4, so as to remove the repeal provision.

Laws of 1990, ch. 588, § 30, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed. Text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Subsection (4) has been set out as repealed, effective July 1, 2001, pursuant to its own terms.

Cross References — Transfer of School Nurse Intervention Program to the Office of Healthy Schools, see § 37-14-3(3).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statute requiring doctor or other person to report child abuse. 73 A.L.R.4th 782.

Propriety of prophylactic availability programs. 52 A.L.R.5th 477.

Am Jur. 38 Am. Jur. Trials 1, Professional Liability for Failure to Report Child Abuse.

HEAD LICE

SEC.

41-79-21.

Notification by school officials of recurrent head lice.

§ 41-79-21. Notification by school officials of recurrent head lice.

If a student in any public elementary or secondary school has had head lice on three (3) occasions during one (1) school year while attending school, or if the parent of the student has been notified by school officials that the student has had head lice on three (3) occasions in one (1) school year, as determined by the school nurse, public health nurse or a physician, the principal or administrator shall notify the county health department of the recurring problem of head lice with that student. The county health department then shall instruct the child's parents or guardians on how to treat head lice, eliminate head lice from household items, and prevent the recurrence of head lice. The county health department shall charge the child's parents or guardians a fee to recover its costs of providing treatment and counseling for the head lice. The school principal or administrator shall not allow the child to attend school until proof of treatment is obtained.

SOURCES: Laws, 1997, ch. 510, § 1; Laws, 1999, ch. 348, § 1, eff from and after July 1, 1999.

SELF-ADMINISTRATION OF ASTHMA MEDICATION AT SCHOOL

SEC.

41-79-31. Self-administration of asthma medication at school by public and nonpublic students.

§ 41-79-31. Self-administration of asthma medication at school by public and nonpublic students.

(1) The school board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student if the student's parent or guardian:

(a) Provides written authorization for self-administration to the school; and

(b) Provides a written statement from the student's health-care practitioner that the student has asthma and has been instructed in self-administration of asthma medications. The statement shall also contain the following information:

(i) The name and purpose of the medications;

(ii) The prescribed dosage;

(iii) The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and

(iv) The length of time for which the medications are prescribed.

(2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.

(3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student from the self-administration of asthma medications. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of asthma medications.

(4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) through (3) of this section.

(5) Upon fulfilling the requirements of this section, a student with asthma may possess and use asthma medications when at school, at a school-sponsored activity, under the supervision of school personnel or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

SOURCES: Laws, 2003, ch. 493, § 1, eff from and after July 1, 2003.

CHAPTER 81

Perinatal Health Care

SEC.

- 41-81-1. Authorization for regionalized service system.
41-81-3. Contracts with and grants to health-care providers.

§ 41-81-1. Authorization for regionalized service system.

The State Department of Health is authorized to coordinate the development and implementation of a regionalized system of perinatal health-care services.

SOURCES: Laws, 1987, ch. 514, § 1, eff from and after July 1, 1987.

Cross References — Municipal support of prenatal services, § 21-19-65.
Public assistance funds for prenatal services for medically needy children, § 43-13-115.

§ 41-81-3. Contracts with and grants to health-care providers.

The State Department of Health is authorized to enter into contracts with and provide grants to health-care providers in order to implement a statewide regionalization program.

SOURCES: Laws, 1987, ch. 514, § 2, eff from and after July 1, 1987.

Cross References — Municipal support of prenatal services, § 21-19-65.
Public assistance funds for prenatal services for medically needy children, § 43-13-115.

CHAPTER 83

Utilization Review of Availability of Hospital Resources and Medical Services

SEC.

- 41-83-1. Definitions.
- 41-83-3. Certificate requirement for utilization review; nontransferability; disclosure to public.
- 41-83-5. Certificate requirement for general in-house utilization review; exemptions.
- 41-83-7. Application for certificate; fees.
- 41-83-9. Submission of information in conjunction with application.
- 41-83-11. Expiration date of certificate; renewal; fees.
- 41-83-13. Grounds for denial or revocation of certificate; time to supply additional information; hearing.
- 41-83-15. Reporting requirements to evaluate and determine compliance.
- 41-83-17. Disclosure or publication of information; consent or authorization; court order.
- 41-83-19. Penalties for violations.
- 41-83-21. Certification of need of immediate hospital care; prima facie evidence.
- 41-83-23. Judicial review; other remedies.
- 41-83-25. Health insurance plans; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.
- 41-83-27. Other health insurance policies; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.
- 41-83-29. Group or blanket health insurance policies; certificate requirement; contract with private review agent.
- 41-83-31. Adverse determination to patient or health-care provider; discussion of reasons; denial of third party reimbursement or precertification; evaluation by trained specialist.

§ 41-83-1. Definitions.

As used in this chapter, the following terms shall be defined as follows:

(a) "Utilization review" means a system for reviewing the appropriate and efficient allocation of hospital resources and medical services given or proposed to be given to a patient or group of patients as to necessity for the purpose of determining whether such service should be covered or provided by an insurer, plan or other entity.

(b) "Private review agent" means a nonhospital-affiliated person or entity performing utilization review on behalf of:

- (i) An employer or employees in the State of Mississippi; or
- (ii) A third party that provides or administers hospital and medical benefits to citizens of this state, including: a health maintenance organization issued a certificate of authority under and by virtue of the laws of the State of Mississippi; or a health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts or benefits in this state.

(c) "Utilization review plan" means a description of the utilization review procedures of a private review agent.

(d) "Department" means the Mississippi State Department of Health.

(e) "Certificate" means a certificate of registration granted by the Mississippi State Department of Health to a private review agent.

SOURCES: Laws, 1990, ch. 347, § 1, eff from and after July 1, 1990.

§ 41-83-3. Certificate requirement for utilization review; non-transferability; disclosure to public.

(1) A private review agent who approves or denies payment or who recommends approval or denial of payment for hospital or medical services or whose review results in approval or denial of payment for hospital or medical services on a case by case basis, may not conduct utilization review in this state unless the Mississippi State Department of Health has granted the private review agent a certificate.

(2) The Mississippi State Department of Health shall issue a certificate to an applicant that has met all the requirements of this chapter and all applicable regulations of the department.

(3) A certificate issued under this chapter is not transferable.

(4) The State Department of Health shall adopt regulations to implement the provisions of this chapter. Any information required by the department with respect to customers or patients shall be held in confidence and not disclosed to the public.

SOURCES: Laws, 1990, ch. 347, § 2; Laws, 1994, ch. 378, § 1, eff from and after July 1, 1994.

§ 41-83-5. Certificate requirement for general in-house utilization review; exemptions.

No certificate is required for those private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations or other managed care entities, clinics, private physician offices or any other health facility or entity, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. Such general in-house utilization review is completely exempt from the provisions of this chapter.

SOURCES: Laws, 1990, ch. 347, § 3, eff from and after July 1, 1990.

§ 41-83-7. Application for certificate; fees.

(1) An applicant for a certificate shall:

(a) Submit an application to the department; and

(b) Pay to the department the application fee established by the department through regulation.

(2) The application shall:

(a) Be on a form and accompanied by any supporting documentation that the department requires; and

(b) Be signed and verified by the applicant.

(3) The application fee required under this section shall be sufficient to pay for the administrative cost of the certification program and any other cost associated with carrying out the provisions of this chapter.

SOURCES: Laws, 1990, ch. 347, § 4, eff from and after July 1, 1990.

§ 41-83-9. Submission of information in conjunction with application.

In conjunction with the application, the private review agent shall submit information that the department requires including:

(a) A utilization review plan that includes a description of review criteria, standards and procedures to be used in evaluating proposed or delivered hospital and medical care and the provisions by which patients, physicians or hospitals may seek reconsideration or appeal of adverse decisions by the private review agent;

(b) The type and qualifications of the personnel either employed or under contract to perform the utilization review;

(c) The procedures and policies to insure that a representative of the private review agent is reasonably accessible to patients and providers at all times in this state;

(d) The policies and procedures to insure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

(e) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan; and

(f) A list of the third party payors for which the private review agent is performing utilization review in this state.

SOURCES: Laws, 1990, ch. 347, § 5, eff from and after July 1, 1990.

Editor's Note — As enacted by Section 5 of Chapter 347, Laws of 1990, this section contained a subsection (1) but no subsection (2). The subsection (1) designation has been removed at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

§ 41-83-11. Expiration date of certificate; renewal; fees.

(1) A certificate expires on the second anniversary of its effective date unless the certificate is renewed for a two-year term as provided in this section.

(2) Before the certificate expires, a certificate may be renewed for an additional two-year term if the applicant:

(a) Otherwise is entitled to the certificate;

(b) Pays the department the renewal fee set by the department through regulation; and

(c) Submits to the department a renewal application on the form that the department requires and satisfactory evidence of compliance with any requirement of this chapter for certificate renewal.

SOURCES: Laws, 1990, ch. 347, § 6, eff from and after July 1, 1990.

§ 41-83-13. Grounds for denial or revocation of certificate; time to supply additional information; hearing.

(1) The department shall deny a certificate to any applicant if, upon review of the application, the department finds that the applicant proposing to conduct utilization review does not:

(a) Have available the services of a physician to carry out its utilization review activities;

(b) Meet any applicable regulations the department adopted under this chapter relating to the qualifications of private review agents or the performance of utilization review; and

(c) Provide assurances satisfactory to the department that the procedure and policies of the private review agent will protect the confidentiality of medical records and the private review agent will be reasonably accessible to patients and providers for five (5) working days a week during normal business hours in this state.

(2) The department may revoke or deny a certificate if the holder does not comply with the performance assurances under this section, violates any provision of this chapter, or violates any regulation adopted pursuant to this chapter.

(3) Before denying or revoking a certificate under this section, the department shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of this chapter and the opportunity to request a hearing. If an applicant or certificate holder requests a hearing, the department shall send a hearing notice and conduct a hearing in accordance with the Mississippi Administrative Procedure Law, Section 25-43-17, Mississippi Code of 1972.

SOURCES: Laws, 1990, ch. 347, § 7, eff from and after July 1, 1990.

§ 41-83-15. Reporting requirements to evaluate and determine compliance.

The department shall establish reporting requirements to:

(a) Evaluate the effectiveness of private review agents; and

(b) Determine if the utilization review programs are in compliance with the provisions of this section and applicable regulations.

SOURCES: Laws, 1990, ch. 347, § 8, eff from and after July 1, 1990.

§ 41-83-17. Disclosure or publication of information; consent or authorization; court order.

A private review agent may not disclose or publish individual medical records or any other confidential medical information obtained in the performance of utilization review activities without the patient's authorization or an order of a county, circuit or chancery court of Mississippi or a U.S. district court. Provided, however, that nothing in this chapter shall prohibit private review agents from providing information to a third party with whom the private review agent is under contract or acting on behalf of.

SOURCES: Laws, 1990, ch. 347, § 9, eff from and after July 1, 1990.

§ 41-83-19. Penalties for violations.

A person who violates any provision of this chapter or any regulation adopted under this chapter is guilty of a misdemeanor and on conviction is subject to a penalty not exceeding One Thousand Dollars (\$1,000.00).

SOURCES: Laws, 1990, ch. 347, § 10, eff from and after July 1, 1990.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 41-83-21. Certification of need of immediate hospital care; prima facie evidence.

Notwithstanding language to the contrary elsewhere contained herein, if a licensed physician certifies in writing to an insurer within seventy-two (72) hours of an admission that the insured person admitted was in need of immediate hospital care, such shall constitute a prima facie case of the medical necessity of the admission. To overcome this, the entity requesting the utilization review and/or the private review agent must show by clear and convincing evidence that the admitted person was not in need of immediate hospital care.

SOURCES: Laws, 1990, ch. 347, § 11, eff from and after July 1, 1990.

§ 41-83-23. Judicial review; other remedies.

Any person aggrieved by a final decision of the department or a private review agent in a contested case under this chapter shall have the right of judicial appeal to the chancery court of the county of the residence of the aggrieved person.

Notwithstanding any provision of this chapter, the insured shall have the express right to pursue any legal remedies he may have in a court of competent jurisdiction.

SOURCES: Laws, 1990, ch. 347, § 12, eff from and after July 1, 1990.

§ 41-83-25. Health insurance plans; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.

(1) Every health insurance plan proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of those benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent who has a certificate in accordance with this chapter.

(2) Notwithstanding any other provisions of this chapter, for claims where the medical necessity of the provision of a covered benefit is disputed, a health service plan that does not meet the requirements of subsection (1) of this section shall pay any person or hospital entitled to reimbursement under the policy or contract.

SOURCES: Laws, 1990, ch. 347, § 13, eff from and after July 1, 1990.

§ 41-83-27. Other health insurance policies; certificate requirement; contract with private review agent; reimbursement under policy where medical necessity in dispute.

(1) Every insurer proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent that has a certificate in accordance with this chapter.

(2) Notwithstanding any provision of this chapter, for claims where the medical necessity of the provision of a covered benefit is disputed, an insurer that does not meet the requirements of subsection (1) of this section shall pay any person or hospital entitled to reimbursement under the policy or contract.

SOURCES: Laws, 1990, ch. 347, § 14, eff from and after July 1, 1990.

§ 41-83-29. Group or blanket health insurance policies; certificate requirement; contract with private review agent.

Any health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(a) Have a certificate in accordance with this chapter; or

(b) Contract with a private review agent that has a certificate in accordance with this chapter.

SOURCES: Laws, 1990, ch. 347, § 15, eff from and after July 1, 1990.

§ 41-83-31. Adverse determination to patient or health-care provider; discussion of reasons; denial of third party reimbursement or precertification; evaluation by trained specialist.

Any program of utilization review with regard to hospital, medical or other health-care services provided in this state shall comply with the following:

(a) No determination adverse to a patient or to any affected health-care provider shall be made on any question relating to the necessity or justification for any form of hospital, medical or other health-care services without prior evaluation and concurrence in the adverse determination by a physician licensed to practice in Mississippi. The physician who made the adverse determination shall discuss the reasons for any adverse determination with the affected health-care provider, if the provider so requests. The physician shall comply with this request within fourteen (14) calendar days of being notified of a request. Adverse determination by a physician shall not be grounds for any disciplinary action against the physician by the State Board of Medical Licensure.

(b) Any determination regarding hospital, medical or other health-care services rendered or to be rendered to a patient which may result in a denial of third-party reimbursement or a denial of precertification for that service shall include the evaluation, findings and concurrence of a physician trained in the relevant specialty or subspecialty, if requested by the patient's physician, to make a final determination that care rendered or to be rendered was, is, or may be medically inappropriate.

(c) The requirement in this section that the physician who makes the evaluation and concurrence in the adverse determination must be licensed to practice in Mississippi shall not apply to the Comprehensive Health Insurance Risk Pool Association or its policyholders and shall not apply to any utilization review company which reviews fewer than ten (10) persons residing in the State of Mississippi.

SOURCES: Laws, 1990, ch. 347, § 16; Laws, 1998, ch. 508, § 1; Laws, 2000, ch. 443, § 1, eff from and after July 1, 2000.

ATTORNEY GENERAL OPINIONS

The board of medical licensure may adopt regulations which set professional standards for physicians performing utilization review activities and provide for disciplinary action for physicians found to be in violation thereof. Morgan, Aug. 18, 2006, A.G. Op. 06-0324.

CHAPTER 85

Mississippi Hospice Law of 1995

SEC.

- 41-85-1. Short title.
- 41-85-3. Definitions.
- 41-85-5. Operation of hospice without license; display of license; transfer of license; services constituting hospice program of care; effect of local zoning laws upon location of hospice.
- 41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing new applications for hospice licensure until all current licenses have been surveyed.
- 41-85-9. Inspections and investigations.
- 41-85-11. Application for license; plan for delivery of hospice care; duration of license; renewal of license; conditional license.
- 41-85-13. Denial, revocation or suspension of license.
- 41-85-15. Coordination with other providers by hospices; contractual arrangements for provision of hospice care; administration and elements of hospice care generally.
- 41-85-17. Components or modes of hospice programs.
- 41-85-19. Government and administration of hospice program.
- 41-85-21. Recordkeeping requirements.
- 41-85-23. Disclosure of information received through hospice program.
- 41-85-25. Advertisement of hospice program; penalties.

Editor's Note — Former §§ 41-85-1 through 41-85-25, derived from Laws of 1990, ch. 466, §§ 1-13, which was known as the Mississippi Hospice Law of 1992, administered by the Department of Health, and required the licensing of hospices, was repealed by Laws of 1990, ch. 466, § 14, effective from and after July 1, 1992.

§ 41-85-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Hospice Law of 1995."

SOURCES: Laws, 1995, ch. 325, § 1, eff from and after July 1, 1995.

§ 41-85-3. Definitions.

When used in this chapter, unless the context otherwise requires:

(a) "Autonomous" means a separate and distinct operational entity which functions under its own administration and bylaws, either within or independently of a parent organization.

(b) "Department" means the Mississippi Department of Health.

(c) "Freestanding hospice" means a hospice that is not a part of any other type of health-care provider.

(d) "Hospice" means an autonomous, centrally administered, nonprofit or profit, medically directed, nurse-coordinated program providing a continuum

of home, outpatient and homelike inpatient care for not less than four (4) terminally ill patients and their families. It employs a hospice care team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need regardless of inability to pay.

(e) "Hospice care team" means an interdisciplinary team which is a working unit composed by the integration of the various helping professions and lay persons providing hospice care. Such team shall, as a minimum, consist of a licensed physician, a registered nurse, a social worker, a member of the clergy or a counselor and volunteers.

(f) "Hospice services" means items and services furnished to an individual by a hospice, or by others under arrangements with such a hospice program.

(g) "Medically directed" means that the delivery of medical care is directed by a licensed physician who is employed by the hospice for the purpose of providing ongoing palliative care as a participating care giver on the hospice care team.

(h) "Palliative care" means the reduction or abatement of pain and other troubling symptoms by appropriate coordination of all elements of the hospice care team needed to achieve needed relief of distress.

(i) "Patient" means the terminally ill individual receiving hospice services.

(j) "Person" means an individual, a trust or estate, partnership, corporation, association, the state, or a political subdivision or agency of the state.

(k) "Terminally ill" refers to a medical prognosis of limited expected survival, of six (6) months or less at the time of referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone outside the context of symptom control are no longer appropriate.

SOURCES: Laws, 1995, ch. 325, § 2; Laws, 1996, ch. 369, § 1; Laws, 2006, ch. 322, § 1, eff from and after July 1, 2006.

RESEARCH REFERENCES

ALR. Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

§ 41-85-5. Operation of hospice without license; display of license; transfer of license; services constituting hospice program of care; effect of local zoning laws upon location of hospice.

(1) It is unlawful for a person to operate or maintain a hospice, use the title "hospice", or represent that the person provides a hospice program of care, without first obtaining a license therefor from the department.

(2) The license shall be displayed in a conspicuous place inside the hospice program office; shall be valid only in the possession of the person to which it is issued; shall not be subject to sale, assignment or other transfer, voluntary or involuntary; and shall not be valid for any hospice other than the hospice for which originally issued.

(3) Services provided by a hospital, nursing home or other health-care facility or health-care provider shall not be considered to constitute a hospice program of care unless such facility, provider or care giver establishes a freestanding or distinct hospice unit, staff, facility and services to provide hospice home care, homelike inpatient hospice care, or outpatient hospice care under the separate and distinct administrative authority of a hospice program.

(4) A license for a hospice program shall not be issued if the hospice is to be located in an area in violation of any local zoning ordinances or regulations.

SOURCES: Laws, 1995, ch. 325, § 3, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

§ 41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing new applications for hospice licensure until all current licenses have been surveyed.

(1) The administration of this chapter is vested in the Mississippi Department of Health, which shall:

(a) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for licensure or renewals thereof;

(b) Collect in advance at the time of filing an application for a license or at the time of renewal of a license a fee of One Thousand Dollars (\$1,000.00) for each site or location of the licensee;

(c) Levy a fee of Eighteen Dollars (\$18.00) per bed for the review of inpatient hospice care;

(d) Conduct annual licensure inspections of all licensees which may be the same inspection as the annual Medicare certification inspection; and

(e) Promulgate applicable rules and standards in furtherance of the purpose of this chapter and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(i) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(ii) Standards for the organization and quality of patient care;

(iii) Procedures for maintaining records; and

(iv) Provision for the inpatient component of hospice care and for other professional and ancillary hospice services.

(2) All fees collected by the department under this section shall be used by the department exclusively for the purposes of licensure, regulation, inspection, investigations and discipline of hospices under this chapter.

(3) The State Department of Health shall not process any new applications for hospice licensure after January 2007 until the department can substantiate that all current licenses and their branches have been surveyed in conjunction with rules and regulations set forth by the department to survey such licenses and branches. Existing satellite branch offices seeking licensure as required under Section 105.05 of the Minimum Standards of Operation for Hospice are exempt from this subsection. This subsection (3) shall stand repealed on July 1, 2011.

SOURCES: Laws, 1995, ch. 325, § 4; Laws, 1998, ch. 433, § 7; Laws, 2007, ch. 469, § 1; Laws, 2008, ch. 498, § 1; Laws, 2008, ch. 518, § 1, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 1 of ch. 498, Laws of 2008, effective from and after July 1, 2008 (approved April 21, 2008), amended this section. Section 1 of ch. 518, Laws of 2008, effective from and after July 1, 2008 (approved May 8, 2008), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 518, Laws of 2008, which contains language that specifically provides that it supersedes § 41-85-7 as amended by Laws of 2008, ch. 498.

Amendment Notes — The 2007 amendment added (2) through (4) and redesignated the former first paragraph as present (1); and in (1), added (c), redesignated former (c) and (d) as present (d) and (e), and substituted “One Thousand Dollars (\$1,000.00) for each site or location of the licensee” for “Five Hundred Dollars (\$500.00)” at the end of (b).

The first 2008 amendment (ch. 498) extended the date of the repealer in (4) by substituting “July 1, 2011” for “July 1, 2008.”

The second 2008 amendment (ch. 518) added the last two sentences of (3); and deleted former (4), which read: “This section shall stand repealed on July 1, 2008.”

§ 41-85-9. Inspections and investigations.

Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this chapter and of rules or standards in force pursuant hereto. The right of inspection shall also extend to any program which the department has reason to believe is offering or advertising itself as a hospice without a license, but no inspection of any such program may be made without the permission of the owner or person in charge thereof unless a warrant is first obtained authorizing such inspection. Any application for a license or renewal thereof made pursuant to this chapter shall constitute permission for any inspection of the hospice for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

SOURCES: Laws, 1995, ch. 325, § 5, eff from and after July 1, 1995.

§ 41-85-11. Application for license; plan for delivery of hospice care; duration of license; renewal of license; conditional license.

(1) An application shall be filed on a form prescribed by the department and shall be accompanied by the appropriate license fee as well as satisfactory proof that the hospice is in compliance with this chapter and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the hospice in accordance with the requirements of this chapter. The initial application shall be accompanied by a plan for the delivery of home, outpatient and inpatient hospice care to terminally ill persons and their families. Such plan shall contain, but not be limited to:

(a) The estimated average number of terminally ill persons to be served monthly;

(b) The geographic area in which hospice services will be available;

(c) A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers;

(d) Provisions for the implementation of hospice home care within three (3) months of licensure;

(e) Provisions for the implementation of hospice outpatient and home-like inpatient care within twelve (12) months of licensure;

(f) The qualifications of any existing or potential contractee;

(g) The projected annual operating cost of the hospice; and

(h) A statement of financial resources and personnel available to the applicant to deliver hospice care. If the applicant is an existing health-care provider, the application shall be accompanied by a copy of the most recent profit-loss statement and, if applicable, the most recent licensure inspection report.

(2) A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire automatically one (1) year from the date of issuance. Sixty (60) days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department; and the license shall be renewed if the applicant has first met the requirements established under this chapter and all rules promulgated hereunder and has provided the information described in subsection (1) in addition to the application. However, the application for license renewal shall be accompanied by an update of the plan for delivery of hospice care only if information contained in the plan submitted pursuant to subsection (1) is no longer applicable.

(3) A hospice program against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

SOURCES: Laws, 1995, ch. 325, § 6, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 5, 6.

§ 41-85-13. Denial, revocation or suspension of license.

(1) The department may deny, revoke or suspend a license.

(2) Any of the following actions by a hospice program or any of its employees shall be grounds for action by the department against a hospice program:

(a) A violation of the provisions of this chapter or of any standard or rule promulgated hereunder.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

(3) If, three (3) months after the date of obtaining a license, or at any time thereafter, a hospice does not have in operation the home-care component of hospice care, the department shall immediately revoke the license of such hospice.

(4) If, twelve (12) months after the date of obtaining a license, or at any time thereafter, a hospice does not have in operation the outpatient and homelike inpatient components of hospice care, the department shall immediately revoke the license of such hospice.

SOURCES: Laws, 1995, ch. 325, § 7, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 5, 6.

§ 41-85-15. Coordination with other providers by hospices; contractual arrangements for provision of hospice care; administration and elements of hospice care generally.

(1) A hospice care program shall coordinate its services with those of the patient's primary or attending physicians.

(2) A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice program may contract out for some elements of its services for a patient and family; however, direct patient care must be maintained with the patient and the hospice care team so that overall coordination of services, which is responsive and appropriate to the patient and family needs, can be maintained by the hospice care team. A majority of hospice services available through an individual hospice shall be provided directly by the licensee. Any contract entered into between a hospice and a health-care facility or service provider shall specify that the hospice retain the responsibility for planning, coordinating and prescribing hospice services and care on behalf of a hospice patient and his family. No hospice

which contracts for any hospice service may charge fees for services provided directly by the hospice care team which are duplicative of contractual services provided to the individual patient or his family.

(3) With respect to contractual arrangements for inpatient hospice care:

(a) The aggregate number of inpatient days provided by a hospice through all contractual arrangements between the hospice and licensed health-care facilities providing inpatient hospice care may not exceed twenty percent (20%) of the aggregate total number of days of hospice care provided to all patients receiving hospice care from the hospice during a twelve-month period. However, the provisions of this paragraph (a) shall not apply to a hospice facility providing inpatient continue care.

(b) The designation of a specific room or rooms for inpatient hospice care shall not be required if beds are available through contract between an existing health-care facility and a hospice.

(c) Licensed beds designated for inpatient hospice care through contract between an existing health-care facility and a hospice shall not be required to be delicensed from one type of bed in order to enter into a contract with a hospice, nor shall the physical plant of any facility be required to be altered, except that a homelike atmosphere may be required.

(d) Staffing standards for inpatient hospice care provided through a contract may not exceed the staffing standards required under the license held by the contractee.

(e) Under no circumstance may a hospice contract for the use of a licensed bed in a health-care facility or another hospice that has, or has had within the last eighteen (18) months, a suspended, revoked or conditional license, accreditation or rating.

(4) A hospice care team shall be responsible for inpatient, outpatient and home-care aspects of care.

(5) Any inpatient component of care shall be under the direct administration of the hospice program.

(6) Hospice care shall provide symptom control provided by a hospice care team skilled in medical and psychosocial management of distressing signs and symptoms.

(7) The hospice shall have a medical director, who shall have responsibility for medical direction of the care and treatment of patients and their families rendered by the hospice care teams.

(8) Hospice care will be available twenty-four (24) hours a day, seven (7) days a week.

(9) A hospice program shall have a bereavement program which shall provide a continuum of supportive and therapeutic services for the family, including formal and informal individual, family and group treatment modalities used as needed to support the bereaved family.

(10) A hospice program shall foster independence of the patient and his family by providing training, encouragement and support so that the patient and family can care for themselves as much as possible.

(11) The unit of care in a hospice program shall be the patient and family.

(12) A hospice program will provide a continuum of care and a continuity of care givers throughout the length of care for the patient and to the family through the bereavement period.

(13) A hospice program of care shall not impose the dictates of any value or belief system on its patients and their families.

(14) Admission to a hospice program shall be made by a licensed physician and shall be dependent on the expressed request and informed consent of the patient and family.

(15) Accurate and current records shall be kept on all patients and their families.

(16) A registered nurse shall be employed full time by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice care team. No other full-time personnel are required.

SOURCES: Laws, 1995, ch. 325, § 8, eff from and after July 1, 1995.

Cross References — Inpatient continue care component of hospice care, see § 41-85-17.

§ 41-85-17. Components or modes of hospice programs.

Each hospice program shall consist of at least three (3) of the four (4) components or modes of care described in this section which afford the terminally ill individual and the family of the terminally ill individual a range of service delivery which can be tailored to specific needs and preferences of the patient and family at any point in time. These four (4) components are:

(a) Hospice home care. This form of delivery of services shall be the primary form of care except for facilities providing inpatient care. The services of the hospice home care program shall be of the highest quality and shall be provided by the interdisciplinary, interactive qualified hospice team members.

(b) Inpatient hospice care. The inpatient component of care, when contracted for through an institution which is not a hospice providing inpatient continue care, is an adjunct to hospice home care and shall primarily be used only for short-term stays. The facility or rooms within a facility used for the hospice inpatient component of care shall be arranged, administered and managed in such a manner to provide privacy, dignity, comfort, warmth and safety for the terminally ill patient and the family. Every possible accommodation shall be made to create as homelike an atmosphere as practicable. To facilitate overnight family visitation within the facility, rooms shall be limited to no more than double occupancy; and, whenever possible, both occupants shall be hospice patients. There shall be a continuum of care and a continuity of care givers between the hospice home program and the inpatient aspect of care to the extent practicable and compatible with the preferences of the patient and his family. The hours for daily operation and the location of the place where the services are provided

shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

(c) Outpatient hospice care. The hospice outpatient service shall meet the same standards of quality as applied to inpatient care and hospice home care, considering the inherent differences between inpatients and outpatients with respect to their needs and modes of treatment. The hours for daily operation and the location of the place where the services are provided shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

(d) Inpatient continue care. The inpatient continue care component of hospice care may be provided directly by the hospice. The facility used for the hospice inpatient continue care shall be arranged, administered and managed in such a manner to provide privacy, dignity, comfort, warmth and safety for the terminally ill patient and the family. Every possible accommodation shall be made to create as homelike an atmosphere as practicable. To facilitate overnight family visitation within the facility, rooms shall be limited to no more than double occupancy. The hospice shall be in operation twenty-four (24) hours a day and must provide hospice home care, inpatient hospice care, and outpatient care.

SOURCES: Laws, 1995, ch. 325, § 9, eff from and after July 1, 1995.

§ 41-85-19. Government and administration of hospice program.

(1) A hospice program shall have a clearly defined organized governing body that has autonomous authority for the conduct of the hospice program. This body is not required to meet more often than quarterly.

(2) The hospice program shall have a director, administrator or manager who shall be responsible for the overall coordination and administration of the hospice program.

SOURCES: Laws, 1995, ch. 325, § 10; Laws, 2009, ch. 365, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted “governing body that has autonomous” for “governing body, consisting of a minimum of seven (7) persons who are representative of the local community at large, which has autonomous” in (1).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 13 et seq.

§ 41-85-21. Recordkeeping requirements.

An up-to-date, interdisciplinary record of care being given and patient and family status shall be kept. Records shall contain pertinent past and current medical, nursing, social and other therapeutic information and such other

information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

SOURCES: Laws, 1995, ch. 325, § 11, eff from and after July 1, 1995.

§ 41-85-23. Disclosure of information received through hospice program.

Information received by persons employed by, or providing services to, a hospice or received by the licensing agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient's guardian or the patient's family.

SOURCES: Laws, 1995, ch. 325, § 12, eff from and after July 1, 1995.

§ 41-85-25. Advertisement of hospice program; penalties.

(1) It is unlawful for any person or public body to offer or advertise to the public in any way by any medium whatever to be a hospice as defined in this chapter without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this chapter to advertise or hold out to the public that it holds a license for a hospice program other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) is guilty of a misdemeanor, punishable, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the county jail for not greater than six (6) months, or both. Each day of a continuing violation shall be considered a separate offense.

SOURCES: Laws, 1995, ch. 325, § 13, eff from and after July 1, 1995.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 86

Mississippi Children's Health Care Act

SEC.

- 41-86-1. Short title.
- 41-86-3. Establishment of program; purpose; funding; administration; temporary plan; force and effect of section.
- 41-86-5. Definitions.
- 41-86-7. Permanent plan and program; funding.
- 41-86-9. Children's Health Insurance Program Commission; membership; meetings; organization; support staff and consultants; development of plan; contents.
- 41-86-11. Administering agency; powers and duties; rules and regulations; reports; contracting.
- 41-86-13. Funding; source; effect on program.
- 41-86-15. Eligibility for benefits; determination.
- 41-86-17. Covered benefits and services to be provided; deductibles or other cost-sharing requirements.
- 41-86-19. Children's Health Insurance Program enrollment outreach initiative.
- 41-86-21. Establishment of Children's Health Insurance Program Advisory Board and Joint Legislative Advisory Committee.

§ 41-86-1. Short title.

This chapter shall be known as and may be cited as the Mississippi Children's Health Care Act.

SOURCES: Laws, 1998, ch. 572, § 1; reenacted without change, Laws, 2001, ch. 532, § 1, eff from and after June 30, 2001.

§ 41-86-3. Establishment of program; purpose; funding; administration; temporary plan; force and effect of section.

(1) There is established a statewide Children's Health Insurance Program under Title XXI of the Social Security Act to provide child health-care assistance to targeted, uninsured, low-income children to be administered by the Division of Medicaid in the Office of the Governor. The term "targeted, low-income child" means a child through age eighteen (18) who has been determined eligible for child health assistance and who is a low-income child, or is a child whose family income exceeds the Medicaid applicable income level, but does not exceed one hundred percent (100%) of the federal poverty level, and is not eligible for medical assistance under Title XIX or is not covered under a group health plan.

(2) The Children's Health Insurance Program shall provide the same benefits to children enrolled in the program as are provided to Medicaid recipients under the Mississippi Medicaid Laws, Section 43-13-117.

(3) The Children's Health Insurance Program shall be established subject to the availability of funds specifically appropriated by the Legislature for this purpose and federal matching funds as set forth in Title XXI of the Social Security Act.

(4) In administering the Children's Health Insurance Program, the Division of Medicaid shall have all the authority, duties and responsibilities set forth in Section 43-13-101 et seq.

(5) This section authorizes the Division of Medicaid to submit a temporary plan for children's health insurance to the U.S. Department of Health and Human Services.

(6) From and after the full implementation of the permanent State Child Health Plan authorized under Section 41-86-9, this section shall have no force and effect.

SOURCES: Laws, 1998, ch. 572, § 2; reenacted without change, Laws, 2001, ch. 532, § 2, eff from and after June 30, 2001.

Federal Aspects — Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq. Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

§ 41-86-5. Definitions.

As used in Sections 41-86-5 through 41-86-17, the following definitions shall have the meanings ascribed in this section, unless the context indicates otherwise:

(a) "Act" means the Mississippi Children's Health Care Act.

(b) "Administering agency" means the agency designated by the Mississippi Children's Health Insurance Program Commission to administer the program.

(c) "Board" means the State and Public School Employees Health Insurance Management Board created under Section 25-15-303.

(d) "Child" means an individual who is under nineteen (19) years of age who is not eligible for Medicaid benefits and is not covered by other health insurance.

(e) "Commission" means the Mississippi Children's Health Insurance Program Commission created by Section 41-86-7.

(f) "Covered benefits" means the types of health-care benefits and services provided to eligible recipients under the Children's Health Care Program.

(g) "Division" means the Division of Medicaid in the Office of the Governor.

(h) "Low-income child" means a child whose family income does not exceed two hundred percent (200%) of the poverty level for a family of the size involved.

(i) "Plan" means the State Child Health Plan.

(j) "Program" means the Children's Health Care Program established by Sections 41-86-5 through 41-86-17.

(k) "Recipient" means a person who is eligible for assistance under the program.

(l) "State Child Health Plan" means the permanent plan that sets forth the manner and means by which the State of Mississippi will provide

health-care assistance to eligible uninsured, low-income children consistent with the provisions of Title XXI of the federal Social Security Act, as amended.

SOURCES: Laws, 1998, ch. 572, § 3; Laws, 1999, ch. 546, § 1; reenacted without change, Laws, 2001, ch. 532, § 3, eff from and after June 30, 2001.

Federal Aspects — Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

§ 41-86-7. Permanent plan and program; funding.

There is established a Children's Health Care Program in Mississippi, which shall become effective upon the full implementation of the permanent State Child Health Plan authorized under Section 41-86-9. The program shall be financed by state appropriations and federal matching funds received by the state under the State Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended.

SOURCES: Laws, 1998, ch. 572, § 4; reenacted without change, Laws, 2001, ch. 532, § 4, eff from and after June 30, 2001.

§ 41-86-9. Children's Health Insurance Program Commission; membership; meetings; organization; support staff and consultants; development of plan; contents.

(1) A Mississippi Children's Health Insurance Program Commission is created to develop and adopt the permanent State Child Health Plan. The commission shall be composed of the following members:

- (a) The Executive Director of the Division of Medicaid;
- (b) The Executive Director of the State Department of Health;
- (c) The Mississippi Commissioner of Insurance;

(d) Two (2) members to be appointed by the Lieutenant Governor, one (1) of whom shall be a nurse practitioner who provides health-care services to children, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses;

(e) Two (2) members to be appointed by the Speaker of the House of Representatives, one (1) of whom shall be a physician who provides health-care services to children, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses; and

(f) Two (2) members to be appointed by the Governor, one (1) of whom shall be a physician who provides health-care services to children, and who shall serve as chairman of the commission, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses.

In making appointments to the commission, the appointing authorities shall reflect the gender and racial composition of the state.

Not later than May 1, 1998, the Governor, the Lieutenant Governor and the Speaker shall appoint the members of the commission. After the members are appointed, the commission shall meet on a date designated by the chairman of the commission in Jackson, Mississippi, to organize the commission and establish rules for transacting its business and keeping records. A majority of the members of the commission shall constitute a quorum at all commission meetings. An affirmative vote of a majority of the members shall be required in the adoption of rules, resolutions and reports. All members of the commission shall be notified in writing of all regular and special meetings of the commission, which notices shall be mailed at least five (5) days before the dates of the meetings. The commission may establish any subcommittees that it deems desirable to study and report to the commission with respect to any matter that is within the scope of the commission.

The Division of Medicaid shall provide clerical and administrative support for the Children's Health Insurance Program Commission. In carrying out the provisions of this section, the commission may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the state. In particular, the commission shall consult with the Division of Medicaid, the Office of Insurance of the Department of Finance and Administration, the State Department of Health and the Mississippi Department of Insurance, and those agencies shall cooperate with the commission and provide the commission with any information and other assistance requested by the commission. The commission may consult and seek advice from various groups in the state in order to understand the effect of any existing laws or any changes in law being considered by the commission. For attending meetings of the commission, each member who is not a state official shall be paid per diem compensation in the amount authorized by Section 25-3-69 and each member shall receive expense reimbursement as authorized by Section 25-3-41. All expenses incurred by and on behalf of the commission shall be paid from any funds appropriated or otherwise made available for the purpose of this program, and from any grants or contributions made to the commission for its purpose. The commission shall be dissolved on August 1, 1998.

(2) The Children's Health Insurance Program Commission shall develop the State Child Health Plan, which shall set forth the manner and means by which the State of Mississippi will provide health-care assistance to eligible uninsured, low-income children under the Children's Health Care Program. The commission shall consider all options in developing the plan. The plan must be consistent with and meet the applicable requirements of Title XXI of the federal Social Security Act, as amended, and shall include:

(a) A designation of the agency of the state that will be the administering agency for the program, which shall be either the Division of Medicaid or the State and Public School Employees Health Insurance Management Board created under Section 25-15-303;

(b) Whether the administering agency will have the authority provided under Section 41-86-11(4);

(c) A description of the covered benefits and the eligibility standards for recipients;

(d) The method by which health-care benefits and services provided under the program will be coordinated with other sources of health benefits coverage for children; and

(e) Methods used to assure the quality and appropriateness of care and access to covered benefits.

(3) The Division of Medicaid shall submit the permanent plan adopted by the commission to the United States Secretary of Health and Human Services for approval on or before August 1, 1998.

(4) After the permanent plan has been developed and approved, the Children's Health Care Program shall be implemented and administered by the administering agency designated by the commission.

SOURCES: Laws, 1998, ch. 572, § 5; reenacted without change, Laws, 2001, ch. 532, § 5, eff from and after June 30, 2001.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Federal Aspects — Title XXI of the Social Security Act, see §§ 42 USCS 1397aa et seq.

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The Dental Care Benefits Law (Section 83-51-1 et seq.) is inapplicable to the Children's Health Insurance Program (CHIP), which is not under the jurisdiction of the Department of Insurance, but was, pursuant to Section 41-86-9, developed by the Children's Health Insurance Program Commission; thus, the School Employees Health Insurance Management Board (HIMB) is not prohibited from requiring

that dentists meet certain minimum requirements in order to receive reimbursement for services rendered to children under CHIP, nor is HIMB prohibited from requiring that dentists participate in a provider network in order to receive reimbursement for services rendered to children under CHIP. Anderson and Dale, Dec. 6, 2002, A.G. Op. #02-0433.

§ 41-86-11. Administering agency; powers and duties; rules and regulations; reports; contracting.

(1) The administering agency shall adopt, in accordance with Section 25-43-1 et seq., rules and regulations for the implementation of the program, and for the coordination of the program with the state's other medical assistance programs.

(2) If the Division of Medicaid is designated as the administering agency for the program, the division shall have all of the authority set forth in Section 43-13-101 et seq.

(3) The administering agency shall make reports to the federal government and to the Legislature on the providing of benefits to those children under the program.

(4)(a) If the commission provides that the administering agency will have such authority, the administering agency shall execute a contract or contracts

to provide the health-care coverage and services under the program, after first receiving bids. The contract or contracts may be executed with one or more corporations or associations authorized to do business in Mississippi. All of the coverage and services to be provided under the program may be included in one or more similar contracts, or the coverage and services may be classified into different types with each type included under one or more similar contracts issued by the same or different corporations or associations.

(b) The administering agency shall execute a contract or contracts with one or more corporations or associations that have submitted the best and most cost-effective bids, or shall reject all bids. If the administering agency rejects all bids, it shall notify all bidders of the rejection and shall actively solicit new bids.

SOURCES: Laws, 1998, ch. 572, § 6; reenacted without change, Laws, 2001, ch. 532, § 6, eff from and after June 30, 2001.

§ 41-86-13. Funding; source; effect on program.

(1) The Division of Medicaid shall receive state appropriations for the program and federal matching funds under the State Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended, and the division shall provide those funds to the administering agency for the administration of the program. The Legislature shall include those funds as a line item in the appropriation to the Division of Medicaid.

(2) The program is subject to the availability of state funds specifically appropriated by the Legislature for the purpose of the program and federal matching funds under the State Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended. The division may limit enrollment as necessary to ensure that the costs of the program do not exceed the total amount of state and federal funds appropriated by the Legislature for that purpose.

SOURCES: Laws, 1998, ch. 572, § 7; reenacted without change, Laws, 2001, ch. 532, § 7, eff from and after June 30, 2001.

Federal Aspects — Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

§ 41-86-15. Eligibility for benefits; determination.

(1) Persons eligible to receive covered benefits under Sections 41-86-5 through 41-86-17 shall be low-income children who meet the eligibility standards set forth in the plan. Any person who is eligible for benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq., shall not be eligible to receive benefits under Sections 41-86-5 through 41-86-17. A person who is without insurance coverage at the time of application for the program and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program, if federal approval is obtained to allow eligibility with no waiting period of being without insurance coverage. If

federal approval is not obtained for the preceding provision, the Division of Medicaid shall seek federal approval to allow eligibility after the shortest waiting period of being without insurance coverage for which approval can be obtained. After federal approval is obtained to allow eligibility after a certain waiting period of being without insurance coverage, a person who has been without insurance coverage for the approved waiting period and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program. If the plan includes any waiting period of being without insurance coverage before eligibility, the State and School Employees Health Insurance Management Board shall adopt regulations to provide exceptions to the waiting period for families who have lost insurance coverage for good cause or through no fault of their own.

(2) The eligibility of children for covered benefits under the program shall be determined annually by the same agency or entity that determines eligibility under Section 43-13-115(9) and shall cover twelve (12) continuous months under the program.

SOURCES: Laws, 1998, ch. 572, § 8; Laws, 2000, ch. 625, § 1; reenacted and amended, Laws, 2001, ch. 532, § 8; Laws, 2003, ch. 543, § 8, eff from and after passage (approved Apr. 21, 2003.)

§ 41-86-17. Covered benefits and services to be provided; deductibles or other cost-sharing requirements.

The covered benefits under the program shall include all health-care benefits and services required to be included as covered benefits under Title XXI of the federal Social Security Act, as amended, and shall include early and periodic screening and diagnosis services at least equal to those provided under the Medicaid program. The benefits and services offered and available to state employees under the State and School Employees Health Insurance Plan shall be used as the benchmark for benefits and services under the program, with an emphasis on preventive and primary care. Benefits and services to be provided under the program shall include: vision and hearing screening, eyeglasses and hearing aids, preventive dental care and routine dental fillings. No deductibles, coinsurance or any other cost-sharing shall be allowed for any of the benefits and services named in the preceding sentence. The program also may cover other dental services including amalgam and composite restorations, extractions, space maintainers, stainless steel crowns, sealants, pulpotomies, pulpectomies, and treatment of periodontal disease. The program may exclude from participation in the program any health-care providers who do not agree to hold the families of recipients harmless for charges in excess of plan payments for covered benefits.

SOURCES: Laws, 1998, ch. 572, § 9; reenacted and amended, Laws, 2001, ch. 532, § 9, eff from and after June 30, 2001.

Federal Aspects — Title XXI of the Social Security Act, State Children's Health Insurance Program, see 42 USCS §§ 1397aa et seq.

Cross References — For Mississippi Medicaid Program and the Children's Health Insurance Program; focused on premature infant healthcare, see § 43-13-147.

§ 41-86-19. Children's Health Insurance Program enrollment outreach initiative.

(1) The Division of Medicaid shall develop a Children's Health Insurance Program enrollment outreach initiative in cooperation with the State Department of Education's federal free and reduced lunch program, the State Department of Health, the Department of Human Services, the Department of Finance and Administration, community health centers, the Mississippi State Medical Association, the Mississippi State Hospital Association, other health provider associations and community action agencies/Headstart centers. The enrollment outreach initiative shall be the responsibility of the CHIP Information Coordinator within the Division of Medicaid. The Division of Medicaid is authorized to maintain a statewide in-coming wide area telephone service for the purpose of providing information for and encouraging Children's Health Insurance Program enrollment.

(2)(a) The CHIP Advisory Board established under Section 41-86-21(1) shall conduct a community-based outreach and education campaign to provide information relating to the availability of health benefits for children through Medicaid and the Children's Health Insurance Program. The CHIP Advisory Board shall conduct the campaign in a manner that promotes enrollment in all state child health programs and supports existing outreach and enrollment initiatives, including the initiative mandated under subsection (1) of this section.

(b) The CHIP Advisory Board may contract with community-based organizations or coalitions of community-based organizations to implement the community-based outreach and education campaign, and shall promote and encourage voluntary efforts to implement the campaign. The CHIP Advisory Board shall procure any contracts through a process designed by the advisory board to encourage broad participation of organizations, including those organizations that target population groups with high levels of uninsured children.

(c) Funding for the community-based outreach and education campaign and for any contracts executed by the CHIP Advisory Board to implement the campaign shall be provided by the Division of Medicaid.

SOURCES: Laws, 1999, ch. 546, § 2; Laws, 2000, ch. 625, § 2, eff from and after passage (approved May 23, 2000.)

§ 41-86-21. Establishment of Children's Health Insurance Program Advisory Board and Joint Legislative Advisory Committee.

(1) There is hereby established a C.H.I.P. Advisory Board to advise the State and Public School Employees Health Insurance Management Board relative to the Children's Health Insurance Program. The C.H.I.P. Advisory

Board shall be composed of the Executive Director of the Mississippi State Department of Health, the Executive Director of the Division of Medicaid, Office of the Governor, one (1) member of the State and Public School Employees' Health Insurance Management Board to be appointed by the chairman of the board, and two (2) health-care providers of services to children appointed by the Governor for terms concurrent with that of the Governor. For attending meetings of the C.H.I.P. Advisory Board, those members who are not state officials or state employees shall receive the per diem authorized under Section 25-3-69 and shall receive expense reimbursement as authorized under Section 25-3-41.

(2) There is hereby established a Joint C.H.I.P. Advisory Committee to meet with the C.H.I.P. Advisory Board and advise the State and Public School Employees Health Insurance Management Board relative to the Children's Health Insurance Program. The Joint C.H.I.P. Advisory Committee shall be composed of the Chairman of the House Public Health and Welfare Committee, the Chairman of the Senate Public Health and Welfare Committee, one (1) member of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and one (1) member of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The committee shall meet upon the call of the Chairman of the C.H.I.P. Advisory Board. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the committee. For attending meetings of the Joint C.H.I.P. Advisory Committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session.

SOURCES: Laws, 1999, ch. 546, § 3, eff from and after passage (approved Apr. 21, 1999.)

CHAPTER 87

Early Intervention Act for Infants and Toddlers

SEC.

- 41-87-1. Short title.
 - 41-87-3. Legislative findings.
 - 41-87-5. Definitions.
 - 41-87-7. State Interagency Coordinating Council; membership; meetings; duties of council; conflict of interests.
 - 41-87-9. Minimum components of statewide system of programs providing early intervention services; council to establish plan.
 - 41-87-11. Responsibilities of lead agency; participating agencies to cooperate with lead agency and council.
 - 41-87-12. Local interagency coordinating councils; duties; membership.
 - 41-87-13. Services provided to infants and toddlers and their families upon implementation of early intervention plan; individualized family service plan to serve as comprehensive service plan for all agencies.
 - 41-87-15. Additional federal and state funding to be used to supplement and increase existing funding.
 - 41-87-17. Implementation of early intervention program.
 - 41-87-19. Review of budgets and policies of participating agencies; financial responsibility.
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Editor's Note — Laws of 1990, ch 554, § 10, provided for the automatic repeal of this chapter effective from and after June 30, 1994. Subsequently, Laws of 1994, ch. 379, § 1, amended Laws of 1990, ch. 554, § 10, to delete the automatic repealer.

§ 41-87-1. Short title.

This chapter shall be known and may be cited as the Early Intervention Act for Infants and Toddlers.

SOURCES: Laws, 1990, ch. 554, § 1, eff from and after July 1, 1990.

§ 41-87-3. Legislative findings.

The Legislature finds that there is an urgent and substantial need to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services, which is family centered and community based, for all eligible infants and toddlers and their families.

SOURCES: Laws, 1990, ch. 554, § 2; Laws, 1993, ch. 424, § 1, eff from and after July 1, 1993.

§ 41-87-5. Definitions.

Unless the context requires otherwise, the following definitions in this section apply throughout this chapter:

(a) “Eligible infants and toddlers” or “eligible children” means children from birth through thirty-six (36) months of age who need early intervention services because they:

(i) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

- (A) Cognitive development;
- (B) Physical development, including vision or hearing;
- (C) Communication development;
- (D) Social or emotional development;
- (E) Adaptive development.

(ii) Have a diagnosed physical or mental condition, as defined in state policy, that has a high probability of resulting in developmental delay.

(iii) Are at risk of having substantial developmental delays if early intervention services are not provided due to conditions as defined in state policy. (This category may be served at the discretion of the lead agency contingent upon available resources.)

(b) “Early intervention services” are developmental services that:

- (i) Are provided under public supervision;
- (ii) Are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;
- (iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

- (A) Physical development;
- (B) Cognitive development;
- (C) Communication development;
- (D) Social or emotional development; or
- (E) Adaptive development;

(iv) Meet the requirements of Part C of the Individuals with Disabilities Education Act (IDEA) and the early intervention standards of the State of Mississippi;

(v) Include, but are not limited to, the following services:

- (A) Assistive technology devices and assistive technology services;
- (B) Audiology;
- (C) Family training, counseling and home visits;
- (D) Health services necessary to enable a child to benefit from other early intervention services;
- (E) Medical services only for diagnostic or evaluation purposes;
- (F) Nutrition services;
- (G) Occupational therapy;
- (H) Physical therapy;
- (I) Psychological services;

- (J) Service coordination (case management);
- (K) Social work services;
- (L) Special instruction;
- (M) Speech-language pathology;
- (N) Transportation and related costs that are necessary to enable an infant or toddler and her/his family to receive early intervention services; and
- (O) Vision services;
- (vi) Are provided by qualified personnel as determined by the state's personnel standards, including:
 - (A) Audiologists;
 - (B) Family therapists;
 - (C) Nurses;
 - (D) Nutritionists;
 - (E) Occupational therapists;
 - (F) Orientation and mobility specialists;
 - (G) Pediatricians and other physicians;
 - (H) Physical therapists;
 - (I) Psychologists;
 - (J) Social workers;
 - (K) Special educators;
 - (L) Speech and language pathologists;
- (vii) Are provided, to the maximum extent appropriate, in natural environments, including the home, and community settings in which children without disabilities would participate;
- (viii) Are provided in conformity with an individualized family service plan.
- (c) "Council" means the State Interagency Coordinating Council established under Section 41-87-7.
- (d) "Lead agency" means the State Department of Health.
- (e) "Participating agencies" includes, but is not limited to, the State Department of Education, the Department of Human Services, the State Department of Health, the Division of Medicaid, the State Department of Mental Health, the University Medical Center, the Board of Trustees of State Institutions of Higher Learning and the State Board for Community and Junior Colleges.
- (f) "Local community" means a county either jointly, severally, or a portion thereof, participating in the provision of early intervention services.
- (g) "Primary service agency" means the agency, whether a state agency, local agency, local interagency council or service provider which is designated by the lead agency to serve as the fiscal and contracting agent for a local community.
- (h) "Multidisciplinary team" means a group comprised of the parent(s) or legal guardian and the service providers, as appropriate, described in paragraph (b) of this section, who are assembled for the purposes of:
 - (i) Assessing the developmental needs of an infant or toddler;

- (ii) Developing the individualized family service plan; and
- (iii) Providing the infant or toddler and his or her family with the appropriate early intervention services as detailed in the individualized family service plan.

(i) "Individualized family service plan" means a written plan designed to address the needs of the infant or toddler and his or her family as specified under Section 41-87-13.

(j) "Early intervention standards" means those standards established by any agency or agencies statutorily designated the responsibility to establish standards for infants and toddlers with disabilities, in coordination with the council and in accordance with Part C of IDEA.

(k) "Early intervention system" means the total collaborative effort in the state that is directed at meeting the needs of eligible children and their families.

(l) "Parent," for the purpose of early intervention services, means a parent, a guardian, a person acting as a parent of a child, foster parent, or an appointed surrogate parent. The term does not include the state if the child is a ward of the state where the child has not been placed with individuals to serve in a parenting capacity, such as foster parents, or when a surrogate parent has not been appointed. When a child is the ward of the state, a Department of Human Services representative will act as parent for purposes of service authorization.

(m) "Policies" means the state statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the state's position concerning any matter covered under this chapter.

(n) "Regulations" means the United States Department of Education's regulations concerning the governance and implementation of Part C of IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities.

SOURCES: Laws, 1990, ch. 554, § 3; Laws, 1993, ch. 424, § 2; Laws, 2001, ch. 392, § 1, eff from and after July 1, 2001.

Cross References — State Department of Education, see § 37-3-1 et seq.

State Board for Community and Junior Colleges, see § 37-4-3.

Department of Human Services, see § 37-33-151 et seq.

Board of Trustees of State Institutions of Higher Learning, see § 37-101-1.

University Medical Center, see § 37-115-21 et seq.

State Department of Health, see § 41-3-1 et seq.

State Department of Mental Health, see § 41-4-5 et seq.

Division of Medicaid, see § 43-13-107 et seq.

Federal Aspects — Individuals with Disabilities Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-87-7. State Interagency Coordinating Council; membership; meetings; duties of council; conflict of interests.

(1) For the purposes of implementing this chapter, the Governor shall appoint a State Interagency Coordinating Council.

(2) The council shall be appointed by the Governor. In making the appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the state.

(a) The Governor shall designate a member of the council to serve as the chairperson of the council or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency may not serve as the chairperson of the council.

(b) The council shall be composed as follows:

(i) At least twenty percent (20%) of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged twelve (12) or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one (1) such member shall be a parent of an infant or toddler with a disability or a child with a disability aged six (6) or younger. Parental representatives shall not be employees of any agency or organization which provides early intervention services;

(ii) At least twenty percent (20%) of the members shall be public or private providers of early intervention services;

(iii) At least one (1) member shall be from the State Legislature;

(iv) At least one (1) member shall be involved in personnel preparation;

(v) At least one (1) member shall be from each of the state agencies involved in the provision of or payment for early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies;

(vi) At least one (1) member shall be from the state educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency;

(vii) At least one (1) member shall be from the agency responsible for the state governance of insurance, especially in the area of health insurance;

(viii) At least one (1) member must be from a Head Start agency or program in the state;

(ix) At least one (1) member must be from a state agency responsible for child care;

(x) The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

(3) The council shall meet at least quarterly in such places as it deems necessary. The meetings shall be publicly announced, and to the extent appropriate, open and accessible to the general public.

(4) The council may prepare and approve a budget using Part C funds to conduct hearings and forums, to reimburse members of the council for

reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if such member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical and clerical personnel as may be necessary to carry out its functions under this chapter.

(5) The council shall:

(a) Advise and assist the lead agency in the performance of its responsibilities, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility by the appropriate agency, and the promotion of the inter-agency agreements;

(b) Advise and assist the lead agency in the preparation of applications for funding under Part C of Public Law 102-119;

(c) Prepare and submit an annual report to the Governor and to the United States Secretary of Education on the status of early intervention programs for eligible infants and toddlers and their families operated within the state;

(d) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(e) Assist the lead agency in achieving the full participation, coordination and cooperation of all appropriate public agencies in the state;

(f) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes:

(i) Seeking information from service providers, service coordinators, parents and others about any federal, state or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems are identified and resolved;

(g) To the extent appropriate, assist the lead agency in the resolution of disputes;

(h) Advise and assist the state educational agency regarding the transition of toddlers with disabilities to services provided under Section 619 of Part B of Public Law 105-17, to the extent such services are appropriate; and

(i) Perform other functions as defined in the regulations.

(6) The council may advise and assist the lead agency and the state educational agency regarding the provision of appropriate services for children aged birth to five (5), inclusive.

(7) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

SOURCES: Laws, 1990, ch. 554, § 4; Laws, 1993, ch. 424, § 3; Laws, 2001, ch. 392, § 2, eff from and after July 1, 2001.

Cross References — Definition of lead agency and participating agencies, see § 41-87-5.

Definition of “Council”, see § 41-87-5.

Federal Aspects — Public Law 102-119 and Public Law 105-17 are codified in various sections of Title 20, Chapter 33 (20 USCS §§ 1400 et seq).

§ 41-87-9. Minimum components of statewide system of programs providing early intervention services; council to establish plan.

(1) A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all eligible infants and toddlers and their families, including eligible Indian infants and toddlers and their families on reservations, shall include the following minimum components:

(a) Eligibility criteria and procedures including a definition of the term “developmentally delayed” that will be used by the state in carrying out programs under this chapter;

(b) Timetables for ensuring that appropriate early intervention services will be available to all eligible children in the state, including Indian infants and toddlers on reservations;

(c) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the state, and a family-directed assessment of the resources, priorities and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of their infant or toddler with a disability;

(d) For each eligible child, an individualized family service plan including service coordination (case management) services in accordance with such service plan. The individualized family services plan shall be in writing, done in accordance with Part C regulations, and contain a statement of the natural environments in which early intervention services shall appropriately be provided, as well as all components listed in the Part C regulations;

(e) A comprehensive interagency child find system that includes a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources;

(f) A public awareness program focusing on early identification of infants and toddlers with disabilities, including preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants with disabilities;

(g) A central directory which includes early intervention services, resources and experts available in the state and research and demonstration projects being conducted in the state;

(h) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources

respecting the basic components of early intervention services available in the state, that is consistent with the comprehensive system of personnel development described in Part B of IDEA and that may include:

- (i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;
- (ii) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this chapter;
- (iii) Training personnel to work in rural areas; and
- (iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program in the early intervention system to a preschool program under Section 619 of IDEA;
- (i) A single line of responsibility in the lead agency for carrying out:
 - (i) The general administration and supervision of programs and activities receiving assistance under Part C of IDEA, and the monitoring of programs and activities used by the state to carry out this chapter, whether or not such programs or activities are receiving assistance made available under Part C, to ensure that the state complies with Part C;
 - (ii) The identification and coordination of all available resources within the state from federal, state, local and private sources;
 - (iii) The assignment of financial responsibility in accordance with state and federal law to the appropriate agencies;
 - (iv) The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;
 - (v) The resolution of intra- and interagency disputes; and
 - (vi) The entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination;
- (j) A policy pertaining to contracting or making arrangements with service providers to provide early intervention services in the state as a part of the early intervention system in accordance with state law, state regulation and Part C of IDEA;
- (k) A procedure for timely reimbursement of funds used in accordance with Section 41-87-15;
- (l) Procedural safeguards with respect for programs participating in the early intervention system;
- (m) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to implement the early intervention system are adequately and appropriately prepared and trained including:
 - (i) The establishment and maintenance of standards which are con-

sistent with any state-approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

(ii) To the extent such standards are not based on the highest requirements of the state applicable to a specific profession or discipline, the steps the state is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the state;

(n) A system for compiling data on the number of infants and toddlers with disabilities and their families in the state in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services provided, and other information required by the U.S. Secretary of Education, or state regulation.

SOURCES: Laws, 1990, ch. 554, § 5; Laws, 1993, ch. 424, § 4; Laws, 2001, ch. 392, § 3, eff from and after July 1, 2001.

Cross References — Definition of lead agency, see § 41-87-5.

Duty of Interagency Coordinating Council to coordinate development of statewide plan for services containing the components outlined in this section, see § 41-87-7.

Federal Aspects — Individuals with Disabilities Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-87-11. Responsibilities of lead agency; participating agencies to cooperate with lead agency and council.

(1) The lead agency shall have the following responsibilities in the implementation of this chapter:

(a) General administering and supervising programs and activities receiving Part C funds and the monitoring of programs and activities used by the state to carry out this chapter, whether or not such programs or activities are receiving Part C funds, to ensure that the state complies with this chapter;

(b) Identifying and coordinating all available financial resources within the state from federal, state, local and private sources;

(c) Developing procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;

(d) Ensuring effective implementation of procedural safeguards by each public agency in the state that is involved in the provision of early intervention services;

(e) Entering into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with other state laws) and procedures for resolving intra- and interagency disputes and that include all additional components necessary to ensure meaningful cooperation;

(f) Entering into contracts with agencies within a local community which have been designated by the lead agency as being a primary service agency within the community;

(g) Developing procedures to ensure that available services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers;

(h) Resolving individual disputes in accordance with the regulations;

(i) Adopting and using proper methods of administering each program including:

(i) Monitoring of agencies, institutions and organizations receiving assistance under Part C of Public Law 102-119;

(ii) Enforcing of any obligations imposed on those agencies providing early intervention services according to Part C of Public Law 102-119 and the standards of the state;

(iii) Providing technical assistance to agencies in the program;

(iv) Correction of deficiencies that are identified through monitoring;

(j) Establishing state policies related to how services to children eligible under this chapter and their families will be paid for under the state's early intervention system in accordance with federal regulations;

(k) Development of policies, standards and regulations necessary for implementation of the state early intervention plan that are in compliance with the federal regulations; and

(l) Provision of technical assistance to localities in the establishment and operation of local interagency coordinating councils which may also be designated as primary service agencies for an area.

(2) All participating agencies shall cooperate with the lead agency and the council in the implementation of this chapter.

SOURCES: Laws, 1990, ch. 554, § 6; Laws, 1993, ch. 424, § 5; Laws, 2001, ch. 392, § 4, eff from and after July 1, 2001.

Cross References — Definitions of lead agency and participating agencies, see § 41-87-5.

Federal Aspects — Public Law 102-119 is codified in various sections of Title 20, Chapter 33 (20 USCS §§ 1400 et seq).

§ 41-87-12. Local interagency coordinating councils; duties; membership.

(1) For the purposes of this chapter, the state council will recognize or facilitate the formation of district and local interagency councils to plan and coordinate services, in conjunction with the district office of the lead agency, for eligible infants and toddlers and their families who reside within the county or counties served by the councils. Local councils may enter into contractual agreements with the lead agency to become primary service agencies.

(2) The duties of local interagency coordinating councils shall include:

(a) Identifying existing early intervention services and resources;

(b) Identifying gaps in the service delivery system and developing strategies to address these gaps;

(c) Identifying alternative funding sources;

(d) Facilitating the development of interagency agreements and supporting the development of service coalitions;

(e) Assisting in the implementation of policies and procedures that will promote interagency collaboration;

(f) Developing local procedures and determining mechanisms for implementing policies and procedures in accordance with state and federal statutes and regulations;

(g) Developing a local interagency plan for the coordination of early intervention services to infants and toddlers with disabilities and their families;

(h) Collecting necessary and appropriate data on early intervention service provision in the area;

(i) Serving as the fiscal and or contracting agent for a local community for the provision of early intervention services, training or planning.

(3) Local interagency coordinating councils shall be composed of community members who are interested in supporting coordinated early intervention services, representatives of all local agencies serving infants and toddlers, medical professionals, public and private service providers, parents of persons with disabilities, community and business leaders and local agencies.

SOURCES: Laws, 1993, ch. 424, § 6, eff from and after July 1, 1993.

§ 41-87-13. Services provided to infants and toddlers and their families upon implementation of early intervention plan; individualized family service plan to serve as comprehensive service plan for all agencies.

(1) Upon full implementation of the early intervention system, eligible infants and toddlers and their families shall receive the following, at no cost to the parents:

(a) A comprehensive multidisciplinary evaluation and assessment of the needs of the infant and toddler and the concerns, priorities and resources of the family, and the identification of services to meet such needs;

(b) An explanation of the assessment and all service options in the family's native language or through an interpreter for the deaf, if necessary, accommodating cultural differences;

(c) A written individualized family service plan developed according to the federal Part C regulations and the state guidelines and the recommendations by a multidisciplinary team with the parents as fully participating members of the team;

(d) Case management/service coordination services; and

(e) Procedural safeguards as outlined in state policy and according to the regulations.

(2) The individualized family service plan shall serve as the singular comprehensive service plan for all agencies involved in providing early intervention services to the infant or toddler and the family. Service plans from

other agencies should be incorporated into the individualized family service plan on an individual basis.

(3) The contents of the individualized family service plan shall be fully explained to the parents or guardian, and informed written consent from such parents or guardian shall be obtained before the provision of early intervention services described in such plan. If such parents or guardian do not provide consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

SOURCES: Laws, 1990, ch. 554, § 7; Laws, 1993, ch. 424, § 7; Laws, 2001, ch. 392, § 5, eff from and after July 1, 2001.

Cross References — Application of this section to definition of “Individualized family service plan”, see § 41-87-5.

§ 41-87-15. Additional federal and state funding to be used to supplement and increase existing funding.

Any federal funds made available to the state through Part C and any additional state funds appropriated for early intervention services after July 1, 1990, shall be used to supplement and increase the level of state, local and other federal funds that were expended for eligible children and their families before July 1, 1990. Funds provided under Part C may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source if Part C money did not exist, except that whenever necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, Part C funds may be used to pay the provider of the services pending reimbursement to the lead agency from the agency that has ultimate responsibility for the payment.

SOURCES: Laws, 1990, ch. 554, § 8; Laws, 1993, ch. 424, § 8; Laws, 2001, ch. 392, § 6, eff from and after July 1, 2001.

§ 41-87-17. Implementation of early intervention program.

Full implementation of the early intervention system according to the timelines and objectives established by collaborative participating agencies is contingent upon adequate and continuing state and/or federal funding.

SOURCES: Laws, 1990, ch. 554, § 9; Laws, 1993, ch. 424, § 9, eff from and after July 1, 1993.

§ 41-87-19. Review of budgets and policies of participating agencies; financial responsibility.

The lead agency shall review the proposed budgets and policies of the participating agencies as they effect implementation of the coordinated inter-agency early intervention system in the state. The State Legislature through

its budgetary and appropriations process shall have final responsibility for assignment of financial responsibility in the state.

SOURCES: Laws, 1993, ch. 424, § 10, eff from and after July 1, 1993.

CHAPTER 88

Mississippi Child Immunization Act of 1994

SEC.

41-88-1. Short title.

41-88-3. Administration of child vaccination program by State Department of Health; duties; responsibilities.

§ 41-88-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Child Immunization Act of 1994."

SOURCES: Laws, 1994, ch. 365, § 1, eff from and after passage (approved March 14, 1994).

§ 41-88-3. Administration of child vaccination program by State Department of Health; duties; responsibilities.

(1) The State Department of Health is responsible for assuring that all children in the state are appropriately immunized against vaccine-preventable diseases. In order to improve the state's immunization levels in children, the State Department of Health shall enhance current immunization activities and focus on children receiving all recommended immunizations by twenty-four (24) months of age. The immunizations shall be administered according to the recommendations of the national Advisory Committee on Immunization Practices (ACIP). The administration of vaccine shall not be delayed due to a reluctance of the health-care provider to administer multiple immunizations in a visit. The department shall improve parent compliance and provide more timely scheduling, recall and follow-up in order to achieve national and state immunization level goals.

(2) The State Department of Health shall establish a statewide childhood immunization registry to which all health-care providers will report the administration of childhood immunizations. The State Board of Health will promulgate rules and regulations needed to implement this section. The department shall make information regarding the immunization status of children in the registry available to the parents/guardians of the child, health-care providers and individuals or organizations that are required to report on the immunizations status of children in their care.

SOURCES: Laws, 1994, ch. 365, § 2, eff from and after passage (approved March 14, 1994).

RESEARCH REFERENCES

| | |
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| ALR. Power of court or other public agency to order medical treatment over parental religious objections for child | whose life is not immediately threatened. 52 A.L.R.3d 1118. |
| | Liability of manufacturer or seller for |

injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug. 94 A.L.R.3d 748.

Products liability: pertussis vaccine manufacturers. 57 A.L.R.4th 911.

Liability of manufacturer of oral live polio (Sabin) vaccine for injury or death from its administration. 66 A.L.R.4th 83.

Am Jur. 39 Am. Jur. 2d, Health §§ 19, 28.

CHAPTER 89

Infant Mortality Task Force

SEC.

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| 41-89-1. | Repealed. |
| 41-89-3. | Repealed. |
| 41-89-5. | Duties of task force; recommendations. |

§ 41-89-1. Repealed.

Repealed by its own terms by Laws, 2005, ch. 509, § 1, eff from and after July 1, 2006.

[Laws, 1992, ch. 558 § 1; Laws, 1995, ch. 444, § 1; Laws, 1997, ch. 438, § 1; Laws, 1999, ch. 356, § 1; Laws, 2000, ch. 454, § 1; Laws, 2001, ch. 489, § 1; Laws, 2004, ch. 413, § 1; Laws, 2005, ch. 509, § 1, eff from and after June 30, 2005.]

Editor's Note — Former § 41-89-1 related to the creation, purpose, composition, and appointment and terms of members of the Infant Mortality Task Force.

§ 41-89-3. Repealed.

Repealed by its own terms by Laws, 2005, ch. 509, § 2, eff from and after July 1, 2006.

[Laws, 1992, ch. 558 § 2; Laws, 1995, ch. 444, § 2; Laws, 1997, ch. 438, § 2; Laws, 1999, ch. 356, § 2; Laws, 2003, ch. 417, § 1; Laws, 2005, ch. 509, § 2, eff from and after June 30, 2005.]

Editor's Note — Former § 41-89-3 related to the Infant Mortality Task Force chairman, bylaws and rules, committees, assignment for administrative purposes, budget, payment of members' travel expenses, meetings, and study and report.

§ 41-89-5. Duties of task force; recommendations.

(1) The task force shall:

(a) Serve an advocacy and public awareness role with the general public regarding maternal and infant health issues;

(b) Conduct studies on maternal and infant health and related issues;

(c) Serve as the state's official liaison with the Southern Regional Project on Infant Mortality, a project of the Southern Governors' Association and the Southern Legislative Conference;

(d) Recommend to the Governor and the Legislature appropriate policies to reduce Mississippi's infant mortality and morbidity rates and to improve the status of maternal and infant health; and

(e) Report annually to the Governor and the Legislature regarding the progress made toward the goals outlined in subsection (1) of Section 41-89-1 and the actions taken with regard to recommendations previously made.

(2) In developing its recommendations, the task force may consult with experts and shall examine actions taken in other states and review the policy

statement developed during the Southern Legislative Summit on Healthy Infants and Families sponsored by the Southern Regional Project on Infant Mortality.

SOURCES: Laws, 1992, ch. 558 § 3, eff from and after passage (approved May 15, 1992).

Editor's Note — Laws of 1992, ch. 558, § 4, effective from and after passage (approved May 15, 1992), provides as follows:

“SECTION 4. Executive Order No. 679, issued October 24, 1991, shall have no force or effect from and after the passage of this act.”

Sections 41-89-1 and 41-89-3, which created the Infant Mortality Task Force and provided for the composition, appointment and terms of members and the task force chairman, bylaws and rules, committees and budget, were repealed by their own terms by Sections 1 and 2 of Chapter 509, Laws of 2005, effective from and after July 1, 2006.

CHAPTER 90

Hearing Impairment of Infants and Toddlers

SEC.

- 41-90-1. Screening of newborns for hearing impairment; notification of parents.
- 41-90-3. Legislative findings.
- 41-90-5. Program for registration of newborns suffering from impaired hearing; purpose.
- 41-90-7. Appointment of advisory committee.
- 41-90-9. Fiscal support for Department of Health.

§ 41-90-1. Screening of newborns for hearing impairment; notification of parents.

(1) The physician attending any newborn child in a hospital in this state, or the person attending any newborn child in a hospital in this state if the child is not attended by a physician, shall cause the child, if available, to be screened or evaluated to determine if the child has a potential hearing impairment, using methods and procedures prescribed by the State Department of Health. If it is determined by such screening or evaluation that a newborn child in a hospital in this state may have a hearing impairment, the physician or other person attending the child shall (a) refer the child for confirmatory testing, and (b) make reasonable efforts to promptly notify the child's parents or guardian that the child may have a hearing impairment and shall explain to them the potential effect of such impairment on the development of the child's speech and language skills.

(2) For the purposes of this section, the term "hearing impairment" means a dysfunction of the auditory system of any type or degree that is sufficient that it may interfere with the acquisition and development of speech and language skills with or without the use of sound amplification. No health-care provider shall be civilly liable for the failure to conduct such screening or evaluation.

SOURCES: Laws, 1997, ch. 514, § 1; Laws, 2001, ch. 419, § 1, eff from and after July 1, 2001.

§ 41-90-3. Legislative findings.

Based on information from the American Academy of Pediatrics, the National Institutes of Health, American Academy of Audiology, American Speech-Language-Hearing Association, and others who have completed extensive research on early identification of children with hearing loss, the Legislature finds an urgent need to establish an early identification system and a comprehensive service delivery system of developmentally appropriate services for infants and toddlers with hearing impairments and their families.

SOURCES: Laws, 1997, ch. 514, § 2; Laws, 2001, ch. 419, § 2, eff from and after July 1, 2001.

§ 41-90-5. Program for registration of newborns suffering from impaired hearing; purpose.

(1) There is established a program of early hearing detection and intervention for newborns, infants and toddlers in the State of Mississippi who have impaired hearing. It is the purpose of this early hearing detection and intervention program to:

(a) Identify such children near birth in order that they and their parents or caregivers may be assisted in obtaining education, training, medical, diagnostic and therapeutic services, and other assistance necessary to enable them to become productive citizens of the state;

(b) Provide the state with the information necessary to effectively plan and establish a comprehensive system of developmentally appropriate services for deaf and hearing impaired infants and toddlers; and

(c) Reduce the likelihood of secondary disabling conditions for such children.

(2) The State Department of Health, as "lead agency" for the implementation of Part C of the Individuals with Disabilities Education Act (IDEA) and in accordance with the provisions of the Early Intervention Act for Infants and Toddlers (Section 41-87-1 through Section 41-87-19), shall administer the early hearing detection and intervention program. The State Part C Coordinator is designated as the director of the early hearing detection and intervention program and is charged with its administration. The State Part C Coordinator may designate a staff person (or persons) to carry out the provisions of this section. All hospitals in the state and other providers of services that have established hearing screening procedures for infants and toddlers ages birth through two (2) shall report to the State Part C Coordinator the results of all screening procedures. All persons and providers in the state who perform a diagnostic hearing evaluation on an infant or toddler (birth through age 2 years) referred as a result of a newborn hearing screening failure, shall report the results of the diagnostic hearing evaluation to the State Part C Coordinator within two (2) business days after their completion. The aforementioned persons and providers shall also report to the State Part C Coordinator the results of all diagnostic hearing evaluations of infants and toddlers (birth through age 2 years), including appropriate personal and identifying information, when those results confirm the presence of a hearing impairment consistent with Section 41-90-1(2). The information compiled and maintained in the early hearing detection and intervention program shall be kept confidential in accordance with the applicable requirements and provisions of the Early Intervention Act for Infants and Toddlers (Section 41-87-1 through Section 41-87-19) and Part C of IDEA. Families of all identified children with hearing impairments will be provided information on the availability of services in the state for children with hearing impairments, including those provided in accordance with Part C of IDEA through the statewide infant and toddler early intervention system.

(3) The director of the early hearing detection and intervention program or his or her designee shall facilitate the reporting of infants and toddlers who

fail to pass hearing screening or follow-up diagnostic hearing evaluation by hospitals or any other person or provider of services, as provided in subsection (2) of this section. Reports may be submitted to the early hearing detection and intervention program through the use of prepaid envelopes, sending of facsimiles, or telephone via statewide toll free number, or by other designated electronic data transmission process. It is the purpose of this subsection to facilitate the reporting of infants and toddlers who may have impaired hearing. The reporting requirements shall be designed to be as simple as possible and easily completed by nonprofessional persons when necessary.

(4) The State Board of Health may adopt rules and regulations that the board considers necessary to implement this section with input from the advisory committee established in Section 41-90-7. The board in its rules and regulations may specify the types of information to be provided to the State Part C Coordinator for the early hearing detection and intervention program. The State Department of Health may:

(a) Execute contracts that the department deems necessary to carry out the provisions of this section;

(b) Obtain data from medical records for children suspected of having hearing impairments that are in the custody or under the control of laboratories, hospitals, audiologists, physicians, or other health-care providers to record and analyze the data related to the child's hearing impairment or suspected hearing impairment;

(c) Provide guidance on protocols and equipment to be utilized during diagnostic hearing evaluations of infants and toddlers;

(d) Compile and publish statistical and other studies derived from the patient data obtained under this section to provide in an accessible form information that is useful to physicians, other medical personnel, the State Department of Education, the Legislature and the general public;

(e) Comply with requirements as necessary to obtain federal funds in the maximum amounts and in the most advantageous portions possible; and

(f) Receive and use gifts made for the purpose of this section.

(5) Data obtained by the establishment of the early hearing detection and intervention program that is taken directly from the medical records of a patient is for the confidential use of the State Department of Health and the persons or public or private entities that the department determines are necessary to carry out the intent of the program. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data for the early hearing detection and intervention program. Information that may identify an individual whose medical records have been used for obtaining data for this section is not available for public inspection under the Mississippi Public Records Act of 1983. Statistical information collected under this section is public information.

(6) The following persons who act in compliance with this section are not civilly or criminally liable for furnishing information required by this section: a hospital, clinical laboratory or other health-care facility, an audiologist, an

administrator, officer or employee of a hospital or other health-care facility, and a physician or employee of a physician.

SOURCES: Laws, 1997, ch. 514, § 3; Laws, 2001, ch. 419, § 3, eff from and after July 1, 2001.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Federal Aspects — Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

§ 41-90-7. Appointment of advisory committee.

The State Health Officer shall appoint an advisory committee of at least nine (9) members that may include physician(s), audiologist(s), educator(s), parent(s) and others as appropriate. The committee shall provide advice to the State Interagency Coordinating Council established under Section 41-87-7, and the State Department of Health on issues regarding this chapter and its provisions. The committee shall be created so that members serve for three (3) years and one-third ($\frac{1}{3}$) of its members are retired annually, unless reappointed.

SOURCES: Laws, 1997, ch. 514, § 4; Laws, 2001, ch. 419, § 4, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the second sentence. The words “this act” were changed to “this chapter.” The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 41-90-9. Fiscal support for Department of Health.

(1) The Legislature, knowing that hearing is essential to appropriate language development which is, in turn, directly related to communication skills and the ultimate ability of a child to attain his or her best level of education, and finding limited resources available in the state and few providers qualified to provide developmentally appropriate diagnostic and therapeutic services to infants and toddlers identified through the early hearing detection and intervention program, finds it necessary to supplement the efforts of the State Department of Health as lead agency for the implementation of Part C of IDEA in its efforts to identify and provide developmentally appropriate services to hearing impaired infants and toddlers and their families.

(2) To assure the best possible developmental outcomes for infants and toddlers identified through the early hearing detection and intervention program, the Legislature shall provide fiscal support to the infant and toddler early intervention program of the State Department of Health to:

(a) Establish positions reasonable and appropriate to insure that the provisions of this chapter are carried out;

(b) Procure equipment to achieve universal hearing screening of one hundred percent (100%) of live births;

(c) Procure diagnostic equipment necessary to identify the cause of the child's hearing impairment and plan an appropriate course of therapeutic services;

(d) Assist with the establishment of training programs on the education of hearing impaired children in the colleges and universities of the state;

(e) Assist with in-service training of existing providers of services to the hearing impaired population of the state to increase their skill in providing developmentally appropriate services to infants and toddlers and their families;

(f) Contract directly with individuals identified as qualified providers of services; and

(g) Provide training for appropriate staff of schools and school districts to insure the successful transition of children upon reaching age three (3) from Part C to services under Part B of IDEA through schools across the state or other appropriate services.

SOURCES: Laws, 1997, ch. 514, § 5; Laws, 2001, ch. 419, § 5, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in (2)(a). The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Early Intervention Act for Infants and Toddlers, see §§ 41-87-1 et seq.

Federal Aspects — Individuals with Disabilities Education Act (IDEA), see 20 USCS §§ 1400 et seq.

CHAPTER 91

Central Cancer Registry

SEC.

- 41-91-1. Short title.
- 41-91-3. Definitions.
- 41-91-5. Department to establish and maintain central cancer registry; central data bank; use of data.
- 41-91-7. Board to adopt rules and regulations; powers of board.
- 41-91-9. Department to publish reports with other cancer reporting organizations and research institutions.
- 41-91-11. Confidentiality of patients' medical records.
- 41-91-13. Persons exempt from civil or criminal liability for furnishing information.
- 41-91-15. Penalties for failure to provide, or for misuse of, information.

§ 41-91-1. Short title.

This chapter shall be known and may be cited as the Mississippi Cancer Registry Act.

SOURCES: Laws, 1993, ch. 529, § 1, eff from and after July 1, 1993.

§ 41-91-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

- (a) "Board" means the State Board of Health.
- (b) "Department" means the State Department of Health.

SOURCES: Laws, 1993, ch. 529, § 2, eff from and after July 1, 1993.

§ 41-91-5. Department to establish and maintain central cancer registry; central data bank; use of data.

(1) The department may establish and maintain a central cancer registry for the state.

(2) The cancer registry shall be a central data bank of accurate, precise and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure and control of cancer. Registry data can be used to plan and evaluate cancer control measures in the areas of risk assessment, prevention, early detection, patient care, public and professional education and clinical research.

SOURCES: Laws, 1993, ch. 529, § 3, eff from and after July 1, 1993.

§ 41-91-7. Board to adopt rules and regulations; powers of board.

(1) The board may adopt rules and regulations that the board considers necessary to implement this chapter.

(2) The board in its rules and regulations shall specify the types of information to be provided to cancer registry and the persons and entities who are required to provide such information to the cancer registry.

(3) The department may:

(a) Execute contracts that the department considers necessary;

(b) Receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, hospitals, physician's offices and cancer treatment centers or other health-care providers to record and analyze the data related to those diseases;

(c) Compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel and the general public;

(d) Comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible; and

(e) Receive and use gifts made for the purpose of this chapter.

SOURCES: Laws, 1993, ch. 529, § 4, eff from and after July 1, 1993.

§ 41-91-9. Department to publish reports with other cancer reporting organizations and research institutions.

The department, in cooperation with other cancer reporting organizations and research institutions, may publish reports the department determines are necessary or desirable to carry out the purpose of this chapter.

SOURCES: Laws, 1993, ch. 529, § 5, eff from and after July 1, 1993.

§ 41-91-11. Confidentiality of patients' medical records.

(1) Data obtained under this chapter directly from the medical records of a patient is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this chapter. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this chapter.

(2) Information that may identify an individual whose medical records have been used for obtaining data under this chapter is not available for public inspection under the Mississippi Public Records Act of 1983.

(3) Statistical information collected under this chapter is public information.

SOURCES: Laws, 1993, ch. 529, § 6, eff from and after July 1, 1993.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

§ 41-91-13. Persons exempt from civil or criminal liability for furnishing information.

The following persons who act in compliance with this chapter are not civilly or criminally liable for furnishing the information required hereunder:

- (a) A hospital, clinical laboratory, cancer treatment center or other health-care facility;
- (b) An administrator, officer or employee of a hospital, clinical laboratory, cancer treatment center or other health-care facility; and
- (c) A physician or employee of a physician.

SOURCES: Laws, 1993, ch. 529, § 7, eff from and after July 1, 1993.

§ 41-91-15. Penalties for failure to provide, or for misuse of, information.

Any person or entity who fails to provide the information required to be provided to the cancer registry or who misuses the information provided to the cancer registry shall be subject to a civil penalty of Fifty Dollars (\$50.00) for each such failure or misuse. Such penalty shall be assessed and levied by the board after a hearing, and all such penalties collected shall be deposited into the State General Fund.

SOURCES: Laws, 1993, ch. 529, § 8, eff from and after July 1, 1993.

CHAPTER 93

Osteoporosis Prevention and Treatment Education Act

SEC.

- 41-93-1. Short title.
- 41-93-3. Purposes of chapter.
- 41-93-5. Powers of State Department of Health.
- 41-93-7. Additional powers of State Department of Health.
- 41-93-9. Department may accept grants, etc.; maximization of federal funds.

§ 41-93-1. Short title.

This chapter may be cited as the "Osteoporosis Prevention and Treatment Education Act."

SOURCES: Laws, 1994, ch. 542, § 1, eff from and after July 1, 1994.

§ 41-93-3. Purposes of chapter.

The purposes of this chapter are:

(a) To create a statewide program to promote public awareness and knowledge about the causes of osteoporosis, personal risk factors, the value of prevention and early detection and the options available for treatment;

(b) To enhance knowledge and understanding of osteoporosis by disseminating educational materials, information about research results, services and strategies for prevention and treatment to patients, health professionals and the public;

(c) To help provide easy access to clear, complete and accurate osteoporosis information and referral services;

(d) To heighten awareness about the prevention, detection and treatment of osteoporosis among state and local health and human service officials, health educators and policy makers; and

(e) To promote the development of support groups for osteoporosis patients and their families and caregivers.

SOURCES: Laws, 1994, ch. 542, § 2, eff from and after July 1, 1994.

§ 41-93-5. Powers of State Department of Health.

The State Department of Health may:

(a) Add sufficient qualified staff to implement the Osteoporosis Prevention and Treatment Education Program established by Section 41-93-7;

(b) Provide appropriate training for staff of the Osteoporosis Prevention and Treatment Education Program;

(c) Work to improve the capacity of community-based services available to osteoporosis patients;

(d) Work with governmental offices, community and business leaders, community organizations, health care and human service providers and national osteoporosis organizations to coordinate efforts and maximize state resources in the areas of prevention, education and treatment of osteoporosis;

(e) Identify and, when appropriate, replicate or use successful osteoporosis programs and procure related materials and services from organizations with appropriate expertise and knowledge of osteoporosis.

SOURCES: Laws, 1994, ch. 542, § 3, eff from and after July 1, 1994.

§ 41-93-7. Additional powers of State Department of Health.

(1) The State Department of Health may establish, maintain and promote an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers and educate health professionals and teachers, and for other purposes, as provided in this section.

(2) The department may design and implement strategies for raising public awareness on the causes and nature of osteoporosis, personal risk factors, value of prevention and early detection and options for diagnosing and treating the disease.

(3) The department may develop and work with other agencies in presenting educational programs for physicians and other health professionals in the most up-to-date, accurate scientific and medical information on osteoporosis prevention, diagnosis and treatment, therapeutic decision-making, including guidelines for detecting and treating the disease in special populations, risks and benefits of medications and research advances.

(4) The department may conduct a needs assessment to identify:

(a) Available technical assistance and educational materials and programs nationwide;

(b) The level of public and professional awareness about osteoporosis;

(c) The needs of osteoporosis patients, their families and caregivers;

(d) Needs of health-care providers, including physicians, nurses, managed care organizations and other health-care providers;

(e) The services available to osteoporosis patients;

(f) Existence of osteoporosis treatment programs;

(g) Existence of osteoporosis support groups;

(h) Existence of rehabilitation services; and

(i) Number and location of bone density testing equipment.

(5) Based on the needs assessment conducted under subsection (4) of this section, the department may develop, maintain and make available a list of osteoporosis-related services and osteoporosis health-care providers with specialization in services to prevent, diagnose and treat osteoporosis.

SOURCES: Laws, 1994, ch. 542, § 4, eff from and after July 1, 1994.

§ 41-93-9. Department may accept grants, etc.; maximization of federal funds.

(1) The department may accept grants, services and property from the federal government, foundations, organizations, medical schools and other

entities as may be available for the purposes of fulfilling the obligations of this program.

(2) The department shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this program.

SOURCES: Laws, 1994, ch. 542, § 5, eff from and after July 1, 1994.

CHAPTER 95

Mississippi Health Policy Act of 1994

SEC.

- 41-95-1. Short title.
- 41-95-3. Definitions.
- 41-95-5. Mississippi Health Finance Authority created; board; joint oversight committee; advisory committees; director.
- 41-95-7. Mississippi Health Finance Authority Board; duties and responsibilities; Mississippi Health Care Purchasing Pool.
- 41-95-9. Repealed.

§ 41-95-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Health Policy Act of 1994.”

SOURCES: Laws, 1994, ch. 649, § 28, eff from and after July 1, 1994.

§ 41-95-3. Definitions.

As used in this chapter:

(a) “Authority” means the Mississippi Health Finance Authority created under Section 41-95-5.

(b) “Board” means the Mississippi Health Finance Authority Board created under Section 41-95-5.

(c) “Health-care facility” means all facilities and institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient or ambulatory care to two (2) or more unrelated persons, and shall include, but shall not be limited to, all facilities and institutions included in Section 41-7-173(h).

(d) “Health-care provider” means a person, partnership or corporation, other than a facility or institution, licensed or certified or authorized by state or federal law to provide professional health-care service in this state to an individual during that individual’s health care, treatment or confinement.

(e) “Health insurer” means any health insurance company, nonprofit hospital and medical service corporation, health maintenance organization and, to the extent permitted under federal law, any administrator of an insured, self-insured or publicly funded health-care benefit plan offered by public and private entities.

(f) “Resident” means a person who is domiciled in Mississippi as evidenced by an intent to maintain a principal dwelling place in Mississippi indefinitely and to return to Mississippi if temporarily absent, coupled with an act or acts consistent with that intent.

(g) “Primary care” or “primary health care” includes those health-care services provided to individuals, families and communities, at a first level of care, which preserve and improve health, and encompasses services which promote health, prevent disease, treat and cure illness. It is delivered by

various health-care providers in a variety of settings including hospital outpatient clinics, private provider offices, group practices, health maintenance organizations, public health departments and community health centers. A primary care system is characterized by coordination of comprehensive services, cultural sensitivity, community orientation, continuity, prevention, the absence of barriers to receive and provide services, and quality assurance.

SOURCES: Laws, 1994, ch. 649, § 29, eff from and after July 1, 1994.

RESEARCH REFERENCES

ALR. Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

§ 41-95-5. Mississippi Health Finance Authority created; board; joint oversight committee; advisory committees; director.

(1) The Mississippi Health Finance Authority is created. The authority shall be supervised and directed by the Mississippi Health Finance Authority Board.

(2) The Mississippi Health Finance Authority Board is created. The Mississippi Health Finance Authority Board shall consist of seven (7) members, one (1) from each of the five (5) congressional districts of Mississippi and two (2) from the state at large, who shall be appointed by the Governor with the advice and consent of the Senate. All members shall be qualified electors of the State of Mississippi who have no financial or other interest in any health-care provider or insurer. It is the intent of the Legislature that the appointments to the board reflect the racial and sexual demographics of the entire state. The initial appointments to the Health Finance Authority Board shall be for staggered terms, to be designated by the Governor at the time of appointment as follows: two (2) members to serve for terms ending June 30, 1997; three (3) members to serve for terms ending June 30, 1996; and two (2) members to serve for terms ending June 30, 1995. Thereafter, Mississippi Health Finance Authority Board members shall be appointed for a term of four (4) years from the expiration date of the previous term. All vacancies occurring on the board shall be filled by the Governor in the same manner as original appointments are made within sixty (60) days after the vacancy occurs.

(3) The members of the Mississippi Health Finance Authority Board shall be paid a per diem as authorized by Section 25-3-69 and shall be reimbursed for necessary and ordinary expenses and mileage incurred while performing their duties as members of the board, at the rate authorized by Section 25-3-41.

(4) The members of the Mississippi Health Finance Authority Board shall take an oath to perform faithfully the duties of their office. The oath shall be administered by a person qualified by law to administer oaths. Within thirty (30) days after taking the oath of office, the first board appointed under this

section shall meet for an organizational meeting on call by the Governor. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a chairman, vice-chairman and secretary-treasurer to serve for terms of two (2) years.

(5) The Mississippi Health Finance Authority Board shall adopt rules and regulations not inconsistent with Sections 41-95-1 through 41-95-9, in compliance with the Mississippi Administrative Procedures Law, for the conduct of its business and the carrying out of its duties.

(6) The Mississippi Health Finance Authority Board shall hold at least two (2) regular meetings each year, and additional meetings may be held upon the call of the chairman or at the written request of any three (3) members.

(7) The members of the Mississippi Health Finance Authority Board are individually exempt from any civil liability as a result of any action taken by the board.

(8) There shall be a Joint Oversight Committee of the Mississippi Health Finance Authority composed of three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The chairmanship of the committee shall alternate for twelve-month periods between the Senate members and the House members, with the first chairman appointed by the Lieutenant Governor from among the Senate membership. The committee shall meet once each month, or upon the call of the chairman at such times as he deems necessary or advisable, and may make recommendations to the Legislature pertaining to any matter within the jurisdiction of the Mississippi Health Finance Authority. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the oversight committee. For attending meetings of the oversight committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the oversight committee without prior approval of the proper committee in their respective houses.

(9) The Mississippi Health Finance Authority Board shall appoint the following five (5) advisory committees to assist in administering the provisions of Sections 41-95-1 through 41-95-9:

- (a) The Benefits and Ethics Committee;
- (b) The Provider and Standards Committee;
- (c) The Consumer/Customer Satisfaction Committee;
- (d) The Data Committee; and
- (e) The Health Finance Advisory Committee.

Each committee shall consist of at least five (5) and no more than seven (7) members. The qualifications of the committee members for the committees

listed in paragraphs (a), (b), (c) and (d) shall be set forth by the board in its bylaws and regulations. It is the intent of the Legislature that the appointments to each of the committees listed in paragraphs (a), (b), (c) and (d) reflect the racial and sexual demographics of the entire state. The Health Finance Advisory Committee shall be composed of the chairman of the other committees and the Executive Director of the Mississippi Health Finance Authority. All such committee members shall be appointed by the Mississippi Health Finance Authority Board for a term of four (4) years. If a member is unable to complete his term, a successor shall be appointed to serve the unexpired term. No person may serve as a member of the committee for more than ten (10) years. The terms of the initial committees shall be staggered. Two (2) members shall be appointed to a term of two (2) years, two (2) members shall be appointed to a term of three (3) years, and three (3) members shall be appointed to a term of four (4) years, to be designated by the board at the time of appointment. Members shall receive no salary for services performed, but may be reimbursed for necessary and actual expenses incurred in connection with attendance at meetings or for authorized business from funds made available for such purpose. The committees shall meet at least once in each quarter of the year at a time and place fixed by the committees, and at such other times as requested by the board. The organization, meetings and management of the committees shall be established by regulations promulgated by the board. The board, in its discretion, may appoint additional committees as deemed necessary to carry out its duties and responsibilities.

(10) The Mississippi Health Finance Authority Board shall elect a full-time director who holds a graduate degree in finance, economics, business, health policy or health finance, or the equivalent, and who has no financial or other interest in any health-care provider or payor. The director shall have a minimum of five (5) years' appropriate experience to be certified by the State Personnel Board. The director shall serve at the will and pleasure of the Mississippi Health Finance Authority Board. The director shall be the chief administrative officer of the Mississippi Health Finance Authority Board, shall be the agent of the board for the purpose of receiving all services of process, summonses and notices directed to the board, shall direct the daily operations of the board, and shall perform such other duties as the board may delegate to him. The position of attorney for the Mississippi Health Finance Authority is authorized, who shall be a duly licensed attorney and whose salary and qualifications shall be fixed by the board. Such attorney shall be employed by the Mississippi Health Finance Authority Board. The Director of the Mississippi Health Finance Authority shall appoint heads of offices, who shall serve at the pleasure of the director, and shall appoint any necessary supervisors, assistants and employees. The salary and compensation of such employees shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board created under Section 25-9-101 et seq. The director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the Mississippi Health Finance Authority. All new positions, before staff is to be hired to fill them, must be authorized and

approved by the board itself in accordance with the laws and regulations set forth by the State Personnel Board. The organizational structure of the staff shall provide for the performance of assigned functions and shall be subject to the approval of the board.

(11) The Director of the Mississippi Health Finance Authority is authorized:

(a) To enforce rules and regulations adopted and promulgated by the board implementing or effectuating the powers and duties of the Mississippi Health Finance Authority under any and all statutes within the Mississippi Health Finance Authority's jurisdiction;

(b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(c) To enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the Mississippi Health Finance Authority; and

(d) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the Mississippi Health Finance Authority.

SOURCES: Laws, 1994, ch. 649, § 30, eff from and after July 1, 1994.

Editor's Note — Section 41-95-9 referred to in (5) and (9) was repealed by Laws of 1994, ch. 649, § 32, effective from and after June 30, 1995.

Cross References — Mississippi Administrative Procedures Law generally, see §§ 25-43-1.101.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 41-95-7. Mississippi Health Finance Authority Board; duties and responsibilities; Mississippi Health Care Purchasing Pool.

(1) The Mississippi Health Finance Authority Board shall formulate and carry out all policies regarding services within the jurisdiction of the authority, and shall adopt, modify, repeal and promulgate necessary rules and regulations after due notice and hearing and where not otherwise prohibited by federal or state law. It shall be the duty of the Mississippi Health Finance Authority to provide, to the fullest extent possible, that basic health care benefits are available to all Mississippians. Toward this end, the Mississippi Health Finance Authority Board shall conduct the following activities:

(a) The Mississippi Health Finance Authority shall conduct such research as is necessary to analyze current expenditures for health care for Mississippians, patterns of utilization of health resources, accessibility of

providers and services, as well as other factors including, but not limited to, the demography and geography of Mississippi, which affect the quality and cost of health services. Potential savings through such measures as preventive and primary care, managed care, reduction of cost shifting and group purchasing shall be identified and analyzed. The Mississippi Health Finance Authority is authorized to obtain, collect and preserve such information as determined by the authority to be needed to conduct this research and carry out all other duties. No health care provider, health care facility, state agency, insurance company or related entity may refuse to provide the information required by the authority, but may charge a reasonable cost for the collection and reporting of the information. Information received by the authority shall not be disclosed publicly in such manner as to identify individuals or specific facilities. Information collected by the authority that identifies specific individuals or facilities is exempt from disclosure under the Mississippi Public Records Act. Information obtained by the Mississippi Health Finance Authority shall be governed by state and federal laws, and regulations applicable to the agency from whom information is received.

(b) The Mississippi Health Finance Authority shall determine what basic health services will best serve the needs of the citizens of the State of Mississippi, and in conjunction with such determination, shall identify such additional measures as are desirable to encourage employer participation, promote competition, contain costs and otherwise increase the availability of health benefits to Mississippians.

(c) In conjunction with paragraph (b) of this subsection, the board shall develop a plan for the provision of basic health services to state and local government employees, teachers, persons currently receiving Medicaid benefits, and as many additional persons with no other health benefits as the Mississippi Health Finance Authority Board determines economically feasible, as specifically provided in subsection (2) of this section. The Mississippi Health Finance Authority Board, in developing the plan, may propose graduated levels of participation proportionate to the participant's level of economic circumstances. This plan should include realization of savings identified through paragraphs (a) and (b) of this subsection.

(d) If different health plans are proposed, the Mississippi Health Finance Authority shall require written disclosure of treatment policies, practice standards or practice parameters, and any restrictions or limits on normal health services, including, but not limited to physical services, clinical laboratory tests, hospital and surgical procedures, prescription drugs and biologics, and radiological examinations, by each health plan, unless the authority specifically determines it inadvisable to do so.

(e) The Mississippi Health Finance Authority shall determine what criteria are appropriate for certification of purchasing alliances, to protect the health and safety of the beneficiaries of health services provided pursuant to Sections 41-95-1 through 41-95-9.

(f) Effective upon approval of the plan by the Legislature, the Mississippi Health Finance Authority shall establish procedures for the solicitation

of bids and subsequent purchase of benefits for persons listed in paragraph (c) of this subsection. In contracting for health benefits, the Mississippi Health Finance Authority shall require such information gathering, reports and other measures as are necessary to monitor the provisions of health benefits and the accounting of all financial transactions therein. These shall include any data to continue the research and analysis set forth in paragraph (a) of this subsection.

(2)(a) From and after July 1, 1995, the Mississippi Health Finance Authority Board shall establish the Mississippi Health Care Purchasing Pool for the purpose of coordinating and enhancing the purchasing power of health-care benefit plans of the groups identified under this section. It is not the intent of the Legislature to exacerbate cost shifting or adverse selection in the Mississippi health-care system through the creation of the Health Care Purchasing Pool. In offering and administering the purchasing pool, the board shall not discriminate against individuals or groups based on age, gender, geographic area, industry and medical history. The board may include in the purchasing pool all employees, retirees and dependents covered by the group health insurance plans of the following entities:

- (i) The State of Mississippi;
- (ii) The state institutions of higher learning;
- (iii) Employees of school districts and community/junior college districts as administered by the Department of Finance and Administration;
- (iv) Any political subdivision or municipality, including any school district, that chooses to participate in the pool;
- (v) Such portions of the Medicaid caseload as the board deems proper. Access to medical care or benefit levels for Medicaid recipients shall not diminish as a result of participation or nonparticipation in the pool;
- (vi) Such portions of the uninsured caseload as the board deems proper; and
- (vii) Any private entity that chooses to participate in the pool.

On and after July 1, 1995, the board may make the purchasing pool available to any employer, group, association or trust that chooses to participate in the pool on behalf of the employees or members of the group, association or trust.

(b) In administering the purchasing pool the authority may:

- (i) Contract on behalf of participants in the pool with health-care providers, health-care facilities and health insurers for the delivery of health-care services, including agreements securing discounts for regular, bulk payments to providers and agreements establishing uniform provider reimbursement;
- (ii) Consolidate administrative functions on behalf of participants in the pool, including claims, processing, utilization review, management reporting, benefit management and bulk purchasing;
- (iii) Create a health care cost and utilization data base for participants in the pool, and evaluate potential cost savings; and
- (iv) Establish incentive programs to encourage pool participants to use health-care services judiciously and to improve their health status.

(c) On or before December 15 of each year, the authority shall report to the Legislature on the operation of the purchasing pool, including the number and types of groups and group members participating in the pool, the costs of administering the pool, and the savings attributable to participating groups from the operation of the pool.

(d) This subsection (2) shall not be implemented unless (i) the necessary federal waivers have been granted, or (ii) the Secretary of the federal Department of Health and Human Services certifies that federal law permits this state to implement this program, and (iii) the Secretary of the federal Department of Health and Human Services certifies that full implementation of waiver programs shall receive federal funding at current participation rates, and (iv) further amendment to this section by the Legislature has been enacted and has become law during the 1995 Regular Session or subsequent sessions.

SOURCES: Laws, 1994, ch. 649, § 31, eff from and after July 1, 1994.

Editor's Note — Section 41-95-9 referred to in (1) (e) was repealed by Laws of 1994, ch. 649, § 32, effective from and after June 30, 1995.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

§ 41-95-9. Repealed.

Repealed by Laws 1994, ch. 649, § 32, eff June 30, 1995.

[En Laws, 1994, ch. 649, § 32]

Editor's Note — Former § 41-95-9 related to transfer of powers to the Mississippi Health Finance Authority.

CHAPTER 97

State Employee Wellness and Physical Fitness Programs

SEC.

- 41-97-1. Administration and approval of state agency wellness/exercise programs.
- 41-97-3. Authorization for establishment of state agency wellness/exercise programs.
- 41-97-5. Duties of agencies establishing programs.
- 41-97-7. Acceptance of gifts by agencies for use in programs.

§ 41-97-1. Administration and approval of state agency wellness/exercise programs.

The State Board of Health, established and empowered by Section 41-3-1 et seq., Mississippi Code of 1972, shall discharge as additional duties and responsibilities the provisions of this chapter in the administration and approval of a state agency employee volunteer wellness/exercise program prescribed herein.

SOURCES: Laws, 1995, ch. 441, § 1, eff from and after July 1, 1995.

ATTORNEY GENERAL OPINIONS

This chapter applies only to state agencies, and not to local governments.
Twiford, Jan. 7, 2000, A.G. Op. #99-0680.

§ 41-97-3. Authorization for establishment of state agency wellness/exercise programs.

Any state agency is hereby authorized to establish a state agency employee volunteer wellness and physical fitness program for any employee of such agency desiring to participate, under guidelines issued by the State Board of Health.

SOURCES: Laws, 1995, ch. 441, § 2, eff from and after July 1, 1995.

§ 41-97-5. Duties of agencies establishing programs.

(1) It will be the responsibility of each individual participating agency to create a safe-net blueprint by identifying common institutional responsibilities, relative to and consistent with the legal aspects of preventive and recreational programs and will include but not be restricted to facility safety and maintenance, equipment safety, supervisory credentials, exercise protocol, emergency contingency plans, and participants entry admissibility.

(2) Prior to initiating a wellness/fitness program, each agency shall complete a written detailed report known as a Physical Plant Survey and Analysis. This report shall include but not be restricted to inspection sched-

ules, floor analysis as to proper surface relative to high or low impact exercise, high risk wet or overwaxed areas, lighting, equipment logistics, equipment manufacturers schedule of specific maintenance recommendations, crowding, unauthorized participants, proper exercise mats, electrical current integrity in wet areas, proper directives posted on exercise machines, and the posting of facility rules and regulations.

(3) No state agency will allow any individual to teach, lead or instruct fitness and wellness classes unless they are degreed or certified in the specific area of instruction so offered.

(4) No state agency will allow any type of post surgical or post incident cardiovascular rehabilitation to take place on agency property unless said agency is a medical facility with medical personnel in attendance.

(5) Agencies shall model their comprehensive safe-net blueprint after American College of Sports Medicine standards and guidelines and ISRA standards.

SOURCES: Laws, 1995, ch. 441, § 3, eff from and after July 1, 1995.

§ 41-97-7. Acceptance of gifts by agencies for use in programs.

Every participating agency may accept gifts both physical and financial and/or qualified services to include but not be restricted to private sector sponsorship, federal grants, inter-agency surplus, private donations from any person, firm or corporation in the name of and for the state inclusive of all services, equipment, supplies or materials for use in its wellness/exercise programs.

SOURCES: Laws, 1995, ch. 441, § 4, eff from and after July 1, 1995.

ATTORNEY GENERAL OPINIONS

An "inter-agency surplus" that may act as one of the sources for the acquisition of fitness equipment by a state agency for use in an employee wellness and physical fitness program would include any equipment, supplies and materials that have become obsolete or are no longer needed or required for the use by one state agency

and, are, therefore, available to be donated to another state agency for use in such a program; an agency may support such a program with state funds, as well as with donated funds or surplus funds, and may amend its budget as necessary to account for those funds. Warren, January 16, 1998, A.G. Op. #97-0789.

CHAPTER 99

Qualified Health Center Grant Program

SEC.

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|----------|--|
| 41-99-1. | Definitions. |
| 41-99-3. | Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health. |
| 41-99-5. | Requirements for participation in program; restrictions on use of grants; advisory council. |
| 41-99-7. | Creation of fund for disbursements of grants. |

§ 41-99-1. Definitions.

For purposes of this chapter:

(a) "Mississippi qualified health center" means a public or nonprofit entity that provides comprehensive primary care services that:

(i) Has a community board of directors, the majority of whom are users of such centers;

(ii) Accepts all patients that present themselves despite their ability to pay and uses a sliding-fee-schedule for payments; and

(iii) Serves a designated medically underserved area or population, as provided in Section 330 of the Public Health Service Act.

(b) "Uninsured or medically indigent patient" means a patient receiving services from a Mississippi qualified health center who is not eligible for Medicaid, Medicare or any other type of governmental reimbursement for health-care costs or receiving third-party payments via an employer.

(c) "Department" means the State Department of Health.

(d) "Primary care" means the basic entry level of health care provided by health-care practitioners or nonphysician health-care practitioners, which is generally provided in an outpatient setting.

(e) "Medically underserved area or population" means an area designated by the Secretary of the United States Department of Health and Human Services as an area with a shortage of professionals, health services or a population group designated by the secretary as having a shortage of those services.

(f) "Service grant" means a grant by the department to a Mississippi qualified health center in accordance with this chapter.

(g) "Program" means the Mississippi Qualified Health Center Grant Program established in this chapter.

SOURCES: Laws, 1999, ch. 477, § 3; Laws, 2004, ch. 415, § 1, eff from and after July 1, 2004.

Federal Aspects — Public Health Service Act, see 42 USCS §§ 201 et seq.

§ 41-99-3. Establishment of Qualified Health Center Grant Program; purpose; administration by Department of Health.

The Mississippi Qualified Health Center Grant Program is established, under the direction and administration of the State Department of Health, for the purpose of making service grants to Mississippi qualified health centers for their use in providing care to uninsured or medically indigent patients in Mississippi. The Mississippi Qualified Health Center Grant Program shall be established with such state funds as may be appropriated by the Legislature.

SOURCES: Laws, 1999, ch. 477, § 4; Laws, 2004, ch. 415, § 2, eff from and after July 1, 2004.

§ 41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.

(1) Any Mississippi qualified health center desiring to participate in the program shall make application for a grant to the department in a form satisfactory to the department. The department shall receive grant proposals from Mississippi qualified health centers. All proposals shall be submitted in accordance with the provisions of grant procedures, criteria and standards developed and made public by the department.

(2) The department shall use the funds provided by this chapter to make grants until July 1, 2014, to Mississippi qualified health centers upon proposals made under subsection (1) of this section. Grants that are awarded to Mississippi qualified health centers shall only be used by those centers to:

(a) Increase access to preventative and primary care services by uninsured or medically indigent patients that are served by those centers; and

(b) Create new services or augment existing services provided to uninsured or medically indigent patients, including, but not limited to, primary care medical and preventive services, dental services, optometric services, in-house laboratory services, diagnostic services, pharmacy services, nutritional services and social services.

(3) Grants received by Mississippi qualified health centers under this chapter shall not be used:

(a) To supplant federal funds traditionally received by those centers, but shall be used to supplement them;

(b) For land or real estate investments;

(c) To finance or satisfy any existing debt; or

(d) Unless the health center specifically complies with the definition of a Mississippi qualified health center contained in Section 41-99-1.

(4) The department shall develop regulations, procedures and application forms to govern how grants will be awarded, shall develop a plan to ensure that grants are equitably distributed among all Mississippi qualified health centers, and shall develop an audit process to assure that grant monies are used to provide and expend care to the uninsured and medically indigent.

(5) The department shall establish a fund for the purpose of providing service grants to Mississippi qualified health centers in accordance with this chapter and the following terms and conditions:

(a) The total amount of grants issued under this chapter shall be Four Million Dollars (\$4,000,000.00) per state fiscal year.

(b) No Mississippi qualified health center shall receive assistance under this program in excess of Two Hundred Thousand Dollars (\$200,000.00) per calendar year.

(c) Each Mississippi qualified health center receiving a service grant shall provide a yearly report to the department that details the number of additional uninsured and medically indigent patients that are cared for and the types of services that are provided.

(6) The department shall establish an advisory council to review and make recommendations to the department on the awarding of any grants to Mississippi qualified health centers. Those recommendations by the advisory council shall not be binding upon the department, but when a recommendation by the advisory council is not followed by the department, the department shall place in its minutes reasons for not accepting the advisory council's recommendation, and provide for an appeals process. All approved grants shall be awarded within thirty (30) days of approval by the department.

(7) The composition of the advisory council shall be the following:

(a) Two (2) employees of the department, one (1) of whom must have experience in reviewing and writing grant proposals;

(b) Two (2) executive employees of Mississippi qualified health centers, one (1) of whom must be a chief financial officer;

(c) Two (2) health-care providers who are affiliated with a Mississippi qualified health center; and

(d) One (1) health-care provider who is not affiliated with a Mississippi qualified health center or the department but has training and experience in primary care.

(8) The department may use a portion of any grant monies received under this chapter to administer the program and to pay reasonable expenses incurred by the advisory council; however, in no case shall more than one and one-half percent (1-½%) or Sixty Thousand Dollars (\$60,000.00) annually, whichever is greater, be used for program expenses.

(9) No assistance shall be provided to a Mississippi qualified health center under this chapter unless the Mississippi qualified health center certifies to the department that it will not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

SOURCES: Laws, 1999, ch. 477, § 5; Laws, 2004, ch. 415, § 3; Laws, 2009, ch. 533, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a publishing error in (2). The words "this act" were changed to "this chapter." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Amendment Notes — The 2009 amendment substituted "July 1, 2014" for "July 1, 2009" in the introductory language of (2); and substituted "whichever is greater, be used for program expenses" for "whichever is less, be used to absorb program expenses" at the end of (8).

§ 41-99-7. Creation of fund for disbursements of grants.

There is created a special fund in the State Treasury to be known as the Mississippi Qualified Health Center Grant Program Fund, from which grants and expenditures authorized in connection with the program shall be disbursed. All monies received by legislative appropriation to carry out the purposes of this chapter shall be deposited into the Mississippi Qualified Health Center Grant Program Fund.

SOURCES: Laws, 1999, ch. 477, § 6; Laws, 2004, ch. 415, § 4, eff from and after July 1, 2004.

CHAPTER 101

Mississippi Council on Obesity Prevention and Management

SEC.

- 41-101-1. Creation; acceptance and expenditure of grants and donations; powers, functions, and duties; composition; meetings; compensation; report and plan for implementation of services and programs; inter-departmental cooperation.
- 41-101-3. Council may be established as nonprofit corporation; Department of Health may execute contracts with council for development and implementation of obesity prevention and management programs; Statewide Obesity Prevention and Management Fund established.

§ 41-101-1. Creation; acceptance and expenditure of grants and donations; powers, functions, and duties; composition; meetings; compensation; report and plan for implementation of services and programs; inter-departmental cooperation.

(1) There is created the Mississippi Council on Obesity Prevention and Management, hereinafter referred to as the "council," within the State Department of Health to be in existence for the period from July 1, 2001, until July 1, 2006, or until the council is established as a nonprofit corporation, whichever is the earlier date. The council may accept and expend grants and private donations from any source, including federal, state, public and private entities, to assist it to carry out its functions.

(2) The powers, functions and duties of the council shall include, but not be limited to, the following:

(a) The collection and analysis of data regarding the extent to which children and adults in Mississippi suffer from obesity, and the programs and services currently available to meet the needs of overweight children and adults, and the funds dedicated by the state to maintain those programs and services.

(b) The collection and analysis of data to demonstrate the economic impact on the state of treating obesity and the estimated cost savings of implementing a comprehensive statewide obesity prevention and management model.

(c) The establishment and maintenance of a resources data bank containing information about obesity and related subjects accessible to educational and research institutions, as well as members of the general public.

(d) Consideration of the feasibility of awarding tax incentives for work sites that promote activities to reduce obesity in the work force.

(e) The establishment of recommendations to enhance funding for effective prevention and management programs and services, including Medicaid, private health insurance programs, and other state and federal funds.

(f) The establishment of recommendations designed to assure that children of school age who may have early indicators of obesity have access to affordable, effective prevention and management services.

(g) The establishment of recommendations for changes to statewide elementary and secondary education curricula to implement comprehensive, coordinated obesity awareness and education programs.

(h) Recommendations to enhance clinical education curricula in medical, nursing and other schools of higher education to implement comprehensive, coordinated obesity awareness and education courses.

(i) Recommendations to increase education and awareness among primary care physicians and other health professionals regarding the recognition, prevention and effective management of obesity.

(j) Consideration of a state prevention campaign to increase public awareness of the need for early prevention and management of obesity, possibly including:

(i) A broad-based public education campaign outlining health risks associated with failure to receive treatment for obesity.

(ii) A health professional training campaign.

(iii) A targeted public education campaign directed toward high risk populations.

(k) Coordination with the United States Department of Agriculture, the United States Department of Health and Human Services, the United States Department of Education, the United States Centers for Disease Control and the National Center for Chronic Disease Prevention to share resources and information in order to ensure a comprehensive approach to obesity and obesity-related conditions.

(l) Coordination with the State Departments of Education, Health, Human Services and the Division of Medicaid to share resources and information in order to ensure a comprehensive approach to obesity and obesity-related conditions.

(m) Identification of and recommendations to reduce cultural, environmental and socioeconomic barriers to prevention and management of obesity in Mississippi.

(3) The council shall be composed of the following members:

(a) The Executive Director of the State Department of Health, or his designee;

(b) The Executive Director of the Department of Human Services, or his designee;

(c) The State Superintendent of Education, or his designee;

(d) The Executive Director of the State Department of Mental Health, or his designee;

(e) A representative of the Office of the Governor, to be appointed by the Governor;

(f) A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

(g) A member of the Senate, appointed by the Lieutenant Governor;

(h) Two (2) representatives of the public-at-large, to be selected by the Governor;

(i) The President of either the Mississippi Medical Association or the African-American Obesity Research and Treatment Association (AAORTA), or his designee;

(j) The President of the Mississippi State Nurses Association, or his designee;

(k) The President of the Mississippi Pharmacists Association, or his designee;

(l) The President of the Mississippi Chapter of the American Academy of Pediatrics, or his designee;

(m) The Vice Chancellor of the University of Mississippi Medical Center, or his designee;

(n) A representative appointed from the Mississippi state office of the American Association of Retired Persons;

(o) A representative of the Mississippi Dietetic Association;

(p) A representative of the Mississippi Restaurant Association;

(q) The President of the Mississippi Physical Therapy Association, or his designee;

(r) A member appointed by the Mississippi Commissioner of Insurance;

(s) A representative from a food processor or food manufacturer; and

(t) A representative from the Mississippi Soft Drink Association.

(4) The council shall meet upon call of the Governor not later than August 1, 2001, and shall organize for business by selecting a chairman who shall serve for a one-year term and may be selected for subsequent terms. The council shall adopt internal organizational procedures necessary for efficient operation of the council. Council procedures shall include duties of officers, a process for selecting officers, quorum requirements for conducting business and policies for any council staff. Each member of the council shall designate necessary staff of their departments to assist the council in performing its duties and responsibilities. The council shall meet and conduct business at least quarterly. Meetings of the council shall be open to the public and opportunity for public comment shall be made available at each such meeting. The chairman of the council shall notify all persons who request that notice as to the date, time and place of each meeting.

(5) Members of the council shall receive no compensation for their services.

(6) The council shall submit a report, including proposed legislation if necessary, to the Governor and to the House and Senate Health and Welfare Committees before the convening of the 2004 legislative session. The report shall include a comprehensive state plan for implementation of services and programs in the State of Mississippi to increase prevention and management of obesity in adults and children and an estimate of the cost of implementation of such a plan.

(7) All departments, boards, agencies, officers and institutions of the state and all subdivisions thereof shall cooperate with the council in carrying out its purposes under this section.

SOURCES: Laws, 2001, ch. 432, § 1; Laws, 2003, ch. 484, § 1; Laws, 2004, ch. 574, § 3, eff from and after July 1, 2004.

ATTORNEY GENERAL OPINIONS

Section 41-101-1(3)(i) should be read as permitting representatives from both those entities to sit as members of the Council. Dawkins, May 16, 2003, A.G. Op. 03-0227.

There is no authority for the Council to apply for 501(c)(3) tax exempt status. Dawkins, May 16, 2003, A.G. Op. 03-0227.

The Council may file reports to the Governor and to the House and Senate Health and Welfare Committees in years subsequent to the 2004 Legislative Session. Dawkins, May 16, 2003, A.G. Op. 03-0227.

§ 41-101-3. Council may be established as nonprofit corporation; Department of Health may execute contracts with council for development and implementation of obesity prevention and management programs; Statewide Obesity Prevention and Management Fund established.

(1) The chairman of the Mississippi Council on Obesity Prevention and Management established under Section 41-101-1, with participation from the members of the council, may develop and implement a plan to establish the council as a nonprofit corporation under Mississippi law. For a period of one (1) year after the council is established as a nonprofit corporation, the State Department of Health may continue to support the council by providing meeting space, office space and clerical assistance. After the expiration of the one-year period, the council shall be responsible for obtaining the funds necessary to support the operating needs of the council.

(2) After the council is established as a nonprofit corporation, the State Department of Health may execute a contract with the council to develop and implement comprehensive statewide obesity prevention and management programs. The contract shall contain provisions to require that the council will:

(a) Encourage and assist local communities, workplaces, health insurance companies, churches, schools and other public and private entities to develop and implement obesity prevention and management programs and services, and encourage cooperative, comprehensive programs that reach across all segments of the population.

(b) Encourage and assist health-care providers to develop, implement, and track and report the outcomes of effective weight management products and services, and coordinate the efforts of health-care providers and health plans in exploring the potential for cost-effective obesity management benefits.

(c) Serve as the state clearinghouse for information on ideas, projects and outcomes to make local and statewide programs more effective.

(d) Implement statewide communication programs to alert people to the problem of obesity and how it can be prevented and treated.

(e) Coordinate an annual statewide project that will heighten public awareness of the problem of obesity.

(f) Establish an annual awards program to recognize individual and community achievement in obesity prevention and management.

(g) Serve as the authority that approves and disburses financial assistance to any nonprofit corporation, county or municipality that, in a written application, seeks that assistance to implement a local obesity prevention or management program.

(h) Encourage the donation of funds from the private sector to support the operating costs of the council and to assist in defraying the operation of the programs implemented under this section.

The contract may include any additional provisions that the State Department of Health deems necessary to effectuate the obesity prevention and management programs contemplated by this section.

The council shall submit to the State Department of Health not later than August 1 of each year a written report detailing the operation of obesity prevention and management programs statewide and its expenditure of monies for those programs during the preceding state fiscal year.

(3) After the council is established as a nonprofit corporation:

(a) The Division of Medicaid may execute a contract with the council for obesity prevention and management programs that serve the Medicaid population.

(b) The State Department of Education may execute a contract with the council for obesity prevention and management programs that serve the school population.

(c) Any other state agency, department or institution may execute a contract with the council for obesity prevention and management programs that serve the target population of the agency department or institution.

(4) The obesity prevention and management programs authorized under subsections (2) and (3) of this section may be funded by private grants, federal or state grants obtained by the agency, department or institution, funds appropriated by the Legislature to the agency, department or institution, or private funds obtained by the council.

(5) There is established in the State Treasury a special fund to be known as the Statewide Obesity Prevention and Management Fund. Monies may be expended from the fund, upon appropriation by the Legislature to the appropriate agencies, departments and institutions, to implement the statewide obesity prevention and management programs authorized under subsections (2) and (3) of this section. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

SOURCES: Laws, 2004, ch. 574, § 2, eff from and after July 1, 2004.

CHAPTER 103

Task Force on Heart Disease and Stroke Prevention

SEC.

- 41-103-1. Creation of task force; membership; officers; meetings; administration; compensation.
- 41-103-3. Duties of task force; reports to Legislature and Governor.

§ 41-103-1. Creation of task force; membership; officers; meetings; administration; compensation.

(1) There is created the Task Force on Heart Disease and Stroke Prevention, which will be responsible for making available state-of-the-art information on heart disease and stroke education, prevention and treatment to health-care providers in Mississippi. The task force will serve as a consensus group designed to coordinate efforts in heart disease and stroke education, prevention and treatment.

(2) The task force will consist of nineteen (19) members. Membership of the task force will include one (1) representative from each of the following agencies, organizations or entities, as designated by each respective agency, organization or entity:

- (a) State Department of Health;
- (b) State Department of Education;
- (c) Division of Medicaid, Office of the Governor;
- (d) State Department of Health, Division of Emergency Medical Services;
- (e) American Heart Association (Southeast Affiliate — Mississippi);
- (f) Mississippi State Medical Association;
- (g) Mississippi Nurses Association;
- (h) Mississippi Hospital Association;
- (i) Mississippi Primary Health Care Association;
- (j) University of Mississippi Medical Center;
- (k) Mississippi Chronic Illness Coalition;
- (l) Mississippi Alliance for School Health;
- (m) Information and Quality Health Care;
- (n) Mississippi Association of Health System Pharmacists;
- (o) Health Research and Educational Foundation, Inc.; and
- (p) Association of Black Cardiologists.

(3) In addition to the members designated in subsection (2), membership of the task force will consist of the following persons:

- (a) One (1) member of the Mississippi House of Representatives, appointed by the Speaker of the House;
- (b) One (1) member of the Mississippi Senate, appointed by the Lieutenant Governor; and
- (c) One (1) person appointed by the Governor.

(4) At its first meeting, the task force shall elect a chairman and other necessary officers from among its membership. The chairman and other

officers shall be elected annually by the task force. The task force shall adopt bylaws and rules for its efficient operation. The task force may establish committees that will be responsible for conducting specific task force programs or activities.

(5) The task force shall meet and conduct business at least quarterly. All meetings of the task force and any committees of the task force will be open to the public, with opportunities for public comment provided on a regular basis. Notice of all meetings shall be given as provided in the Open Meetings Act (Section 25-41-1 et seq.) and appropriate notice also shall be given to all persons so requesting of the date, time and place of each meeting. Ten (10) members of the task force will constitute a quorum for the transaction of business.

(6) The task force is assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the task force. The task force will have a line item in the budget of the State Department of Health and will be financed through the department's annual appropriation.

(7) Members of the task force who are not legislators, state officials or state employees may be compensated at the per diem rate authorized by Section 25-3-69 and may be reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force will be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, legislative members will not be paid per diem or expenses for attending meetings of the task force while the Legislature is in session. No task force member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the task force, which action must be recorded in the official minutes of the meeting. Nonlegislative members may be paid from any funds made available to the task force for that purpose.

SOURCES: Laws, 2001, ch. 588, § 1; Laws, 2004, ch. 310, § 1, eff from and after July 1, 2004.

§ 41-103-3. Duties of task force; reports to Legislature and Governor.

(1) The Task Force on Heart Disease and Stroke Prevention has the following duties:

(a) Undertake a statistical and qualitative examination of the incidence and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the social and economic burden of heart disease and stroke in Mississippi;

(b) Publicize the profile of the heart disease and stroke burden and its preventability in Mississippi;

(c) Identify priority strategies that are effective in preventing and controlling risks for heart disease and stroke, based on recommendations promulgated by the American Heart Association and the American Stroke Association;

(d) Adopt and promote a statewide comprehensive heart disease and stroke prevention plan to the general public, state and local elected officials, various public and private organizations and associations, business and industries, agencies, potential funders and other community resources;

(e) Identify and facilitate specific commitments to help implement the plan from the entities listed in paragraph (d);

(f) Facilitate coordination of and communication among state and local agencies and organizations regarding current or future involvement in achieving the aims of the plan;

(g) Receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in Mississippi;

(h) Determine the burden that delayed or inappropriate heart disease and stroke treatment has on the quality of patients' lives and on their financial resources;

(i) Study the economic impact of early heart disease and stroke treatment, especially with regard to quality of care, reimbursement issues and rehabilitation;

(j) Determine what constitutes high quality treatment for heart disease and stroke, and adopt and disseminate guidelines for the treatment of heart disease and stroke patients throughout the state; and

(k) Complete a detailed and specific plan of action for the State of Mississippi, and begin implementing the plan.

(2) The task force shall submit a preliminary report to the Legislature and the Governor within six (6) months of the first meeting; a second report during the 2002 Regular Session of the Legislature; and a third report by December 1, 2002. The reports shall address the plans, actions and resources needed to achieve its accomplishment, and progress in achieving implementation of the plan to reduce the occurrence of and burden from heart disease and stroke in Mississippi. The reports shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended plans and programs. The task force will continue to submit reports to the Legislature and the Governor on an annual basis, updating the progress of implementing the state plan.

SOURCES: Laws, 2001, ch. 588, § 2; Laws, 2004, ch. 310, § 2, eff from and after July 1, 2004.

CHAPTER 105

Healthcare Coordinating Council

SEC.

- 41-105-1. Healthcare Coordinating Council established; appointment and terms of members; election of officers; adoption of bylaws and rules; formation of committees; meetings; staffing and administration; compensation.
- 41-105-3. Duties of council; annual report.

§ 41-105-1. Healthcare Coordinating Council established; appointment and terms of members; election of officers; adoption of bylaws and rules; formation of committees; meetings; staffing and administration; compensation.

(1) There is created the Healthcare Coordinating Council, which will be responsible for making recommendations to the Legislature regarding the establishment of a long-range, comprehensive preventive health-care plan.

(2) The council will consist of fifteen (15) members to be appointed as follows:

(a) Two (2) members of the Mississippi House of Representatives appointed by the Speaker of the House of Representatives to serve four-year terms;

(b) Two (2) members of the Mississippi Senate appointed by the Lieutenant Governor to serve four-year terms;

(c) One (1) representative of an appropriate state agency appointed by the Lieutenant Governor to serve a six-year term;

(d) One (1) representative of an appropriate state agency appointed by the Speaker of the House of Representatives to serve a two-year term;

(e) Two (2) members from appropriate state agencies appointed by the Governor to serve four-year terms;

(f) One (1) health advocate appointed by the Governor to serve a two-year term;

(g) One (1) consumer of health-care services who is not a health-care provider appointed by the Lieutenant Governor to serve a four-year term;

(h) One (1) health advocate appointed by the Speaker of the House of Representatives to serve a six-year term;

(i) One (1) health-care provider appointed by the Lieutenant Governor to serve a two-year term;

(j) One (1) consumer of health-care services who is not a health-care provider appointed by the Speaker of the House of Representatives to serve a four-year term;

(k) One (1) health-care provider appointed by the Governor to serve a six-year term; and

(l) One (1) consumer of health-care services who is not a health-care provider appointed by the Governor to serve a four-year term.

(3) The appointing officers shall give due regard to gender, race and geographic distribution in making their appointments to the council.

(4) At its first meeting, the council shall elect a chairman and other necessary officers from among its membership. The chairman and other officers shall be elected annually by the council. The council shall adopt bylaws and rules for its efficient operation. The council may establish committees that will be responsible for conducting specific council programs or activities.

(5) The council shall meet and conduct business at least quarterly. All meetings of the council and any committees of the council will be open to the public, with opportunities for public comment provided on a regular basis. Notice of all meetings shall be given as provided in the Open Meetings Act (Section 25-41-1 et seq.) and appropriate notice also shall be given to all persons so requesting of the date, time and place of each meeting. Eight (8) members of the council will constitute a quorum for the transaction of business.

(6) The council is assigned jointly to the Mississippi Forum on Children and Families, the Mississippi Health Advocacy Program and the Children's Defense Fund Black Community Crusade for Children for administrative purposes only. Those three (3) organizations shall designate staff to assist the council.

(7) Members of the council who are not legislators, state officials or state employees may be reimbursed for mileage and actual expenses incurred in the performance of their duties by the three (3) administering organizations designated in subsection (6) of this section, if funds are available to the organizations for that purpose. Legislative members of the council will be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, legislative members will not be paid per diem or expenses for attending meetings of the council while the Legislature is in session. No council member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the council, which action must be recorded in the official minutes of the meeting.

SOURCES: Laws, 2002, ch. 469, § 1, eff from and after passage (approved Mar. 25, 2002.)

§ 41-105-3. Duties of council; annual report.

The Healthcare Coordinating Council has the following duties:

(a) Develop recommendations for a long-range preventive health-care plan for the period beginning July 1, 2002, through July 1, 2020;

(b) Consider the feasibility of implementing the following preventive health-care strategies, known as the 20-20 Vision:

(i) Bridge the gap between Medicaid and the Children's Health Insurance Program (CHIP) by expanding coverage under Medicaid for pregnant women up to two hundred percent (200%) of the federal poverty level;

(ii) Expand that coverage for pregnant women beyond two hundred percent (200%) of the federal poverty level with a sliding fee scale for both premiums and health-care services;

(iii) Expand CHIP income eligibility and implement a sliding fee scale for both premiums and health-care services;

(iv) Establish supplemental coverage for gaps in private coverage such as vision and dental health care for children up to the CHIP income eligibility limit;

(v) Increase the period of postnatal care provided under Medicaid;

(vi) Expand Medicaid to include continuously enrolled college students that "age-off" family coverage plans held by their parents;

(vii) Establish a business buy-in plan that expands coverage to the parents of CHIP and Medicaid eligible children and other income-eligible adults;

(viii) Include the state as an eligible employer in the business buy-in plan;

(ix) Expand coverage for individuals with mental illness, specifically addressing the need for therapeutic care for children, day treatment nurseries for preschool-age children, foster home care, group home care, diagnostic and evaluation emergency shelters, and intensive in-home care;

(x) Expand breast and cervical cancer screenings and treatment;

(xi) Establish a demonstration treatment program for heart disease;

(xii) Establish a demonstration treatment program for diabetes;

(xiii) Certify all allowable spending in the state as matching funds to reduce the demand for general fund revenue;

(xiv) Evaluate the potential of increasing the number of health-care providers accepting CHIP and Medicaid patients by participating in a fee-based system of enhanced and optional services;

(xv) Pursue disproportionate share formulas for other health-care providers;

(xvi) Expand school-based services such as the school nurse program;

(xvii) Expand scholarship programs to include all needed health-care service providers;

(xviii) Establish public education campaigns to increase wellness by reducing high-risk behavior; and

(xix) Expand consumer assistance services to ensure prompt and accurate resolution of issues of denial and billing;

(c) Consider the feasibility of including additional preventive health-care strategies in the plan;

(d) For each element of the plan recommended by the council, the following should be established:

(i) Performance benchmarks,

(ii) Projected costs, and

(iii) Projected benefits;

(e) At the meetings of the council, the council shall review level of spending by category, revise spending estimates, assess feasibility of expansions, consider cost options and note changes in applicable federal policy;

(f) Make an annual report to the Legislature by September 1 on the status of the implementation of the plan including recommendations for legislative action; and

(g) Make the annual report available to the public.

SOURCES: Laws, 2002, ch. 469, § 2, eff from and after passage (approved Mar. 25, 2002.)

Federal Aspects — State Children's Health Insurance Program (CHIP), see 42 USCS §§ 1397aa et seq.

CHAPTER 107

Health Care Rights of Conscience

SEC.

| | |
|------------|---|
| 41-107-1. | Title. |
| 41-107-3. | Definitions. |
| 41-107-5. | Rights of Conscience of Health-Care Providers. |
| 41-107-7. | Rights of Conscience of Health-Care Institutions. |
| 41-107-9. | Rights of conscience of health-care payers. |
| 41-107-11. | Civil remedies. |
| 41-107-13. | Severability. |

§ 41-107-1. Title.

This chapter may be known and cited as the “Mississippi Health Care Rights of Conscience Act.”

SOURCES: Laws, 2004, ch. 568, § 1, eff from and after July 1, 2004.

§ 41-107-3. Definitions.

As used in this chapter:

(a) “Health-care service” means any phase of patient medical care, treatment or procedure, including, but not limited to, the following: patient referral, counseling, therapy, testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, or any other care or treatment rendered by health-care providers or health-care institutions.

(b) “Health-care provider” means any individual who may be asked to participate in any way in a health-care service, including, but not limited to: a physician, physician’s assistant, nurse, nurses’ aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, researcher, medical or nursing school faculty, student or employee, counselor, social worker or any professional, paraprofessional, or any other person who furnishes, or assists in the furnishing of, a health-care procedure.

(c) “Health-care institution” means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health-care services, including, but not limited to: hospitals, clinics, medical centers, ambulatory surgical centers, private physician’s offices, pharmacies, nursing homes, university medical schools and nursing schools, medical training facilities, or other institutions or locations where health-care procedures are provided to any person.

(d) “Health-care payer” means any entity or employer that contracts for, pays for, or arranges for the payment of, in whole or in part, a health-care service, including, but not limited to, health maintenance organizations, health plans, insurance companies or management services organizations.

(e) “Employer” means any individual or entity that pays for or provides health benefits or health insurance coverage as a benefit to its employees, whether through a third party, a health maintenance organization, a program of self-insurance, or some other means.

(f) “Participate” in a health-care service means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing, any health-care service or any form of such service.

(g) “Pay” or “payment” means pay, contract for, or otherwise arrange for the payment of, in whole or in part.

(h) “Conscience” means the religious, moral or ethical principles held by a health-care provider, the health-care institution or health-care payer. For purposes of this chapter, a health-care institution or health-care payer’s conscience shall be determined by reference to its existing or proposed religious, moral or ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations or other relevant documents.

SOURCES: Laws, 2004, ch. 568, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the (h). “This chapter” was substituted for “this act” at the beginning of the second sentence.

§ 41-107-5. Rights of Conscience of Health-Care Providers.

(1) **Rights of Conscience.** — A health-care provider has the right not to participate, and no health-care provider shall be required to participate in a health-care service that violates his or her conscience. However, this subsection does not allow a health-care provider to refuse to participate in a health-care service regarding a patient because of the patient’s race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** — No health-care provider shall be civilly, criminally, or administratively liable for declining to participate in a health-care service that violates his or her conscience. However, this subsection does not exempt a health-care provider from liability for refusing to participate in a health-care service regarding a patient because of the patient’s race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** — It shall be unlawful for any person, health-care provider, health-care institution, public or private institution, public official, or any board which certifies competency in medical specialties to discriminate against any health-care provider in any manner based on his or her declining to participate in a health-care service that violates his or her conscience. For purposes of this chapter, discrimination includes, but is not limited to: termination, transfer, refusal of staff privileges, refusal of board certification, adverse administrative action, demotion, loss of career specialty, reassignment to a different shift, reduction of wages or benefits, refusal to award any grant, contract, or other program, refusal to provide

residency training opportunities, or any other penalty, disciplinary or retaliatory action.

SOURCES: Laws, 2004, ch. 568, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3). “This chapter” was substituted for “this act” following “Purposes of” in the second sentence.

§ 41-107-7. Rights of Conscience of Health-Care Institutions.

(1) **Rights of Conscience.** — A health-care institution has the right not to participate, and no health-care institution shall be required to participate in a health-care service that violates its conscience. However, this subsection does not allow a health-care institution to refuse to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** — A health-care institution that declines to provide or participate in a health-care service that violates its conscience shall not be civilly, criminally or administratively liable if the institution provides a consent form to be signed by a patient before admission to the institution stating that it reserves the right to decline to provide or participate in a health-care service that violates its conscience. However, this subsection does not exempt a health-care institution from liability for refusing to participate in a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** — It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care institution, or any person, association, corporation, or other entity attempting to establish a new health-care institution or operating an existing health-care institution, in any manner, including, but not limited to, any denial, deprivation or disqualification with respect to licensure, any aid assistance, benefit or privilege, including staff privileges, or any authorization, including authorization to create, expand, improve, acquire, or affiliate or merge with any health-care institution, because such health-care institution, or person, association, or corporation planning, proposing, or operating a health-care institution, declines to participate in a health-care service which violates the health-care institution's conscience.

(4) **Denial of Aid or Benefit.** — It shall be unlawful for any public official, agency, institution, or entity to deny any form of aid, assistance, grants or benefits, or in any other manner to coerce, disqualify or discriminate against any person, association, corporation or other entity attempting to establish a new health-care institution or operating an existing health-care institution because the existing or proposed health-care institution

declines to participate in a health-care service contrary to the health-care institution's conscience.

SOURCES: Laws, 2004, ch. 568, § 4, eff from and after July 1, 2004.

§ 41-107-9. Rights of conscience of health-care payers.

(1) **Rights of Conscience.** — A health-care payer has the right to decline to pay, and no health-care payer shall be required to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not allow a health-care payer to decline to pay or arrange for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(2) **Immunity from Liability.** — No health-care payer and no person, association, corporation or other entity that owns, operates, supervises or manages a health-care payer shall be civilly or criminally liable by reason of the health-care payer's declining to pay for or arrange for the payment of a health-care service that violates its conscience. However, this subsection does not exempt from liability a health-care payer, or the owner, operator, supervisor or manager of a health-care payer, for declining to pay or arranging for the payment of a health-care service regarding a patient because of the patient's race, color, national origin, ethnicity, sex, religion, creed or sexual orientation.

(3) **Discrimination.** — It shall be unlawful for any person, public or private institution, or public official to discriminate against any health-care payer, or any person, association, corporation, or other entity (a) attempting to establish a new health-care payer, or (b) operating an existing health-care payer, in any manner, including, but not limited to, any denial, deprivation, or disqualification with respect to licensure, aid, assistance, benefit, privilege or authorization, including, but not limited to, any authorization to create, expand, improve, acquire, affiliate or merge with any health-care payer, because a health-care payer, or a person, association, corporation or other entity planning, proposing or operating a health-care payer declines to pay for or arrange for the payment of any health-care service that violates its conscience.

(4) **Denial of Aid or Benefits.** — It shall be unlawful for any public official, agency, institution or entity to deny any form of aid, assistance, grants, or benefits or in any other manner coerce, disqualify or discriminate against any health-care payer, or any person, association, corporation or other entity attempting to establish a new health-care payer or operating an existing health-care payer because the existing or proposed health-care payer declines to pay for, or arrange for the payment of, any health-care service that is contrary to its conscience.

SOURCES: Laws, 2004, ch. 568, § 5, eff from and after July 1, 2004.

§ 41-107-11. Civil remedies.

(1) A civil action for damages or injunctive relief, or both, may be brought for the violation of any provision of this chapter. It shall not be a defense to any claim arising out of the violation of this chapter that such violation was necessary to prevent additional burden or expense on any other health-care provider, health-care institution, individual or patient.

(2) **Damage Remedies.** — Any individual, association, corporation, entity or health-care institution injured by any public or private individual, association, agency, entity or corporation by reason of any conduct prohibited by this chapter may commence a civil action. Upon finding a violation of this chapter, the aggrieved party shall be entitled to recover threefold the actual damages, including pain and suffering, sustained by such individual, association, corporation, entity or health-care institution, the costs of the action, and reasonable attorney's fees; but in no case shall recovery be less than Five Thousand Dollars (\$5,000.00) for each violation in addition to costs of the action and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

(3) **Injunctive Remedies.** — The court in such civil action may award injunctive relief, including, but not limited to, ordering reinstatement of a health-care provider to his or her prior job position.

SOURCES: Laws, 2004, ch. 568, § 6, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1) and (2). "This chapter" was substituted for "this act" in the first sentence of (1) and in the first and second sentences of (2).

§ 41-107-13. Severability.

The provisions of this chapter are declared to be severable, and if any provision, word, phrase or clause of this chapter or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this chapter.

SOURCES: Laws, 2004, ch. 568, § 7, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the section. "This chapter" was substituted for "this act" throughout the section.

CHAPTER 109

Leonard Morris Chronic Kidney Disease Leadership Task Force

SEC.

- 41-109-1. Legislative findings, creation of Leonard Morris Chronic Kidney Disease Leadership Task Force [Repealed effective July 1, 2011].
- 41-109-3. Composition of task force; appointment of members; meeting facilities [Repealed effective July 1, 2011].
- 41-109-5. Duties of task force; recommendations; report [Repealed effective July 1, 2011].
- 41-109-7. Repeal of chapter.

Editor's Note — Section 41-109-5(a) provides that from and after July 1, 2007, the Chronic Kidney Disease Task Force shall be known as the Leonard Morris Chronic Kidney Disease Leadership Task Force.

§ 41-109-1. Legislative findings, creation of Leonard Morris Chronic Kidney Disease Leadership Task Force [Repealed effective July 1, 2011].

It is generally recognized that a significant number of the population of the State of Mississippi has a form of chronic kidney disease (CKD), including persons with seriously reduced kidney function that may progress to end stage renal disease (ESRD) requiring kidney dialysis or the receipt of a kidney transplant. ESRD is usually the result of years of CKD caused by diabetes, high blood pressure or a family history of CKD as the primary contributing factors. Recognizing that the treatment of CKD is a tremendous expense and that the early diagnosis and effective treatment of CKD can prolong lives and delay the high cost of medical treatment, including dialysis and/or transplantation, and that there are existing, cost-effective laboratory test calculations that can assist in the early diagnosis of CKD, there is created the Mississippi Chronic Kidney Disease Task Force.

SOURCES: Laws, 2006, ch. 524, § 1, eff from and after July 1, 2006.

Editor's Note — Section 41-109-5(a) provides that from and after July 1, 2007, the Chronic Kidney Disease Task Force shall be known as the Leonard Morris Chronic Kidney Disease Leadership Task Force.

For repeal of this section, see § 41-109-7.

§ 41-109-3. Composition of task force; appointment of members; meeting facilities [Repealed effective July 1, 2011].

(1) The members of the Chronic Kidney Disease Task Force shall be appointed by the Speaker of the House of Representatives, the Lieutenant Governor and the State Health Officer as follows:

(a) The Speaker and the Lieutenant Governor each shall appoint three (3) physicians from lists submitted by the Mississippi State Medical Association and the Mississippi Medical and Surgical Association, two (2) of whom shall be family practitioners, two (2) of whom shall be nephrologists and two (2) of whom shall be pathologists.

(b) The Speaker shall appoint one (1) member who represents the state affiliate of the National Kidney Foundation and one (1) member who represents the Department of Nephrology at the University of Mississippi Medical Center.

(c) The Lieutenant Governor shall appoint one (1) member who represents owners/operators of clinical laboratories in the state and one (1) member who represents a private renal care provider.

(d) The State Health Officer shall appoint one (1) member who is a dietitian licensed by the State of Mississippi.

(2) The State Health Officer or his designee shall serve as chairperson of the task force.

(3) The State Department of Health shall provide meeting facilities for the task force.

SOURCES: Laws, 2006, ch. 524, § 2, eff from and after July 1, 2006.

Editor's Note — Section 41-109-5(a) provides that from and after July 1, 2007, the Chronic Kidney Disease Task Force shall be known as the Leonard Morris Chronic Kidney Disease Leadership Task Force.

For repeal of this section, see § 41-109-7.

§ 41-109-5. Duties of task force; recommendations; report [Repealed effective July 1, 2011].

The Chronic Kidney Disease Task Force shall:

(a) Be known as the Leonard Morris Chronic Kidney Disease Leadership Task Force from and after July 1, 2007;

(b) Develop a plan to educate health-care professionals about the advantages and methods of early screening, diagnosis and treatment of chronic kidney disease and its complications based on the K/DOQI Clinical Practice Guidelines for Chronic Kidney Disease or other medically recognized clinical practice guidelines and develop a plan to educate health-care professionals about the advantages of end stage renal disease (ESRD) modality education;

(c) Make recommendations on the implementation of a cost-effective plan for that early screening, diagnosis and treatment of chronic kidney disease for the state's population; and

(d) Issue a report to the membership of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee before each regular session of the Mississippi Legislature.

SOURCES: Laws, 2006, ch. 524, § 3; Laws, 2007, ch. 455, § 1, eff from and after July 1, 2007.

Editor's Note — For repeal of this section, see § 41-109-7.

Amendment Notes — The 2007 amendment added (a) and redesignated former (a) through (c), as present (b) through (d); and substituted “before each regular session” for “before the 2007 Session” in (d).

§ 41-109-7. Repeal of chapter.

This chapter shall stand repealed on July 1, 2011.

SOURCES: Laws, 2006, ch. 524, § 4; Laws, 2007, ch. 455, § 2, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. The word “act” was changed to “chapter” so that “This act shall stand repealed” reads “This chapter shall stand repealed.” The Joint Committee ratified the correction at its August 5, 2008, meeting.

Amendment Notes — The 2007 amendment extended the date of the repealer for the chapter from July 1, 2008, until July 1, 2011.

CHAPTER 111

Child Death Review Panel

SEC.

41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2010].

§ 41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2010].

(1) There is created the Child Death Review Panel, whose primary purpose is to foster the reduction of infant and child mortality and morbidity in Mississippi and to improve the health status of infants and children.

(2) The Child Death Review Panel shall be composed of fifteen (15) voting members: the State Medical Examiner or his representative, a pathologist on staff at the University of Mississippi Medical Center, an appointee of the Lieutenant Governor, an appointee of the Speaker of the House of Representatives, and one (1) representative from each of the following: the State Coroners Association, the Mississippi Chapter of the American Academy of Pediatrics, the Office of Vital Statistics in the State Department of Health, the Attorney General's Office, the State Sheriff's Association, the Mississippi Police Chiefs Association, the Department of Human Services, the Children's Advocacy Center, the State Chapter of the March of Dimes, the State SIDS Alliance, and Compassionate Friends.

(3) The Chairman of the Child Death Review Panel shall be elected annually by the Review Panel membership. The Review Panel shall develop and implement such procedures and policies necessary for its operation, including obtaining and protecting confidential records from the agencies and officials specified in subsection (4) of this section. The Review Panel shall be assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the Review Panel.

(4) The Child Death Review Panel shall submit a report annually to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee on or before December 1. The report shall include the numbers, causes and relevant demographic information on child and infant deaths in Mississippi, and appropriate recommendations to the Legislature on how to most effectively direct state resources to decrease infant and child deaths in Mississippi. Data for the Review Panel's review and reporting shall be provided to the Review Panel, upon the request of the Review Panel, by the State Medical Examiner's Office, State Department of Health, Department of Human Services, medical examiners, coroners, health-care providers, law enforcement agencies, any other agencies or officials having information that is necessary for the Review Panel to carry out its duties under this section. The State Department of Health shall also be responsible for printing and distributing the annual report(s) on child and infant deaths in Mississippi.

(5) This section shall stand repealed on July 1, 2010.

SOURCES: Laws, 2006, ch. 556, § 1; Laws, 2007, ch. 373, § 1; Laws, 2008, ch. 304, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2007 amendment added “from the agencies and officials specified in subsection (4) of this section” at the end of the second sentence in (3); and in (4), in the next-to-last sentence, inserted “provided to the Review Panel, upon the request of the Review Panel,” and inserted the language following “Medical Examiner’s Office”, and added “The State Medical Examiner’s” in the last sentence.

The 2008 amendment substituted “State Department of Health” for “State Medical Examiner’s Office” in the last sentences of (3) and (4); and substituted “the department” for “the Medical Examiner” in the last sentence of (3).

Cross References — SIDS/Child Death Scene Investigation reports, see § 41-61-75.

ATTORNEY GENERAL OPINIONS

The Child Death Review Panel has access to any relevant confidential records maintained by the state medical examiner and any relevant public or non-confidential records. Christ, July 28, 2006, A.G. Op. 06-0316.

CHAPTER 113

Tobacco Education, Prevention and Cessation Program

SEC.

- 41-113-1. Legislative intent.
- 41-113-3. Office of Tobacco Control created in State Board of Health; development of comprehensive statewide tobacco education, prevention and cessation program; program components; funding.
- 41-113-5. Director; appointment; responsibilities; qualifications; duties; compensation.
- 41-113-7. Duties of Office of Tobacco Control.
- 41-113-9. Mississippi Tobacco Control Advisory Council created; qualifications and appointment of members; terms of office; vacancies; meetings; compensation.
- 41-113-11. Tobacco Control Program Fund created.

§ 41-113-1. Legislative intent.

(1) The Mississippi Legislature recognizes the devastating impact that tobacco use has on the citizens of our state. Tobacco use is the single most preventable cause of death and disease in this country and this state. Each year, thousands of Mississippians lose their lives to diseases caused by tobacco use, and the cost to the state is hundreds of millions of dollars. Tobacco use also is a large burden on the families and businesses of Mississippi. It is therefore the intent of the Legislature that there be developed, implemented and fully funded a comprehensive and statewide tobacco education, prevention and cessation program that is consistent with the Best Practices for Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended. It is also the intent of the Legislature that all reasonable efforts be made to maximize the amount of federal funds available for this program.

(2) The goals of the tobacco education, prevention and cessation program include, but are not limited to, the following:

- (a) Preventing the initiation of use of tobacco products by youth;
- (b) Encouraging and helping smokers to quit and reducing the numbers of youth and adults who use tobacco products;
- (c) Assisting in the protection from secondhand smoke;
- (d) Supporting the enforcement of laws prohibiting youth access to tobacco products;
- (e) Eliminating the racial and cultural disparities related to use of tobacco products; and
- (f) Educating the public and changing the cultural perception of use of tobacco products in Mississippi.

SOURCES: Laws, 2007, ch. 514, § 13, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

"SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be

in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

§ 41-113-3. Office of Tobacco Control created in State Board of Health; development of comprehensive statewide tobacco education, prevention and cessation program; program components; funding.

(1) There is hereby created the Office of Tobacco Control (office) which shall be an administrative division of the State Department of Health.

(2) The Office of Tobacco Control, with the advice of the Mississippi Tobacco Control Advisory Board, shall develop and implement a comprehensive and statewide tobacco education, prevention and cessation program that is consistent with the recommendations for effective program components and funding recommendations in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as those Best Practices may be periodically amended by the Centers for Disease Control and Prevention.

(3) At a minimum, the program shall include the following components, and may include additional components that are contained within the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, and that based on scientific data and research have been shown to be effective at accomplishing the purposes of this section:

(a) The use of mass media, including paid advertising and other communication tools to discourage the use of tobacco products and to educate people, especially youth, about the health hazards from the use of tobacco products, which shall be designed to be effective at achieving these goals and shall include, but need not be limited to, television, radio, and print advertising, as well as sponsorship, exhibits and other opportunities to raise awareness statewide;

(b) Evidence-based curricula and programs implemented in schools to educate youth about tobacco and to discourage their use of tobacco products, including, but not limited to, programs that involve youth, educate youth about the health hazards from the use of tobacco products, help youth develop skills to refuse tobacco products, and demonstrate to youth how to stop using tobacco products;

(c) Local community programs, including, but not limited to, youth-based partnerships that discourage the use of tobacco products and involve community-based organizations in tobacco education, prevention and cessation programs in their communities;

(d) Enforcement of laws, regulations and policies against the sale or other provision of tobacco products to minors, and the possession of tobacco products by minors;

(e) Programs to assist and help people to stop using tobacco products; and

(f) A surveillance and evaluation system that monitors program accountability and results, produces publicly available reports that review how monies expended for the program are spent, and includes an evaluation of the program's effectiveness in reducing and preventing the use of tobacco products, and annual recommendations for improvements to enhance the program's effectiveness.

(4) All programs or activities funded by the State Department of Health through the tobacco education, prevention and cessation program, whether part of a component described in subsection (2) or an additional component, must be consistent with the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, and all funds received by any person or entity under any such program or activity must be expended for purposes that are consistent with those Best Practices. The State Department of Health shall exercise sole discretion in determining whether components are consistent with the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention.

(5) Funding for the different components of the program shall be apportioned between the components based on the recommendations in the Best Practices for Comprehensive Tobacco Control Programs of the federal Centers for Disease Control and Prevention, as periodically amended, or any additional programs as determined by the State Board of Health to provide adequate program development, implementation and evaluation for effective control of the use of tobacco products. While the office shall develop annual budgets based on strategic planning, components of the program shall be funded using the following areas as guidelines for priority:

- (a) School nurses and school programs;
- (b) Mass media (counter-marketing);
- (c) Cessation programs (including media promotions);
- (d) Community programs;
- (e) Surveillance and evaluation;
- (f) Law enforcement; and
- (g) Administration and management; however, not more than five percent (5%) of the total budget may be expended for administration and management purposes.

(6) In funding the components of the program, the State Department of Health may provide funding for health-care programs at the University of Mississippi Medical Center that are related to the prevention and cessation of the use of tobacco products and the treatment of illnesses that are related to the use of tobacco products.

(7) No statewide, district, local, county or municipal elected official shall take part as a public official in mass media advertising under the provisions of this chapter.

SOURCES: Laws, 2007, ch. 514, § 14; Laws, 2007, ch. 553, § 8, eff from and after July 1, 2007.

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Amendment Notes — The 2007 amendment added the last sentence in (4); and inserted “or any additional programs as determined by the State Board of Health” in the first sentence of (5).

Cross References — University of Mississippi Medical Center generally, see §§ 37-115-21 et seq.

§ 41-113-5. Director; appointment; responsibilities; qualifications; duties; compensation.

(1) The Office of Tobacco Control shall be under the management of a director, who shall be appointed by the State Health Officer. The responsibility for implementation of the comprehensive and statewide tobacco education, prevention and cessation program shall be vested in the director. The director shall be an individual who has knowledge and experience in public health, medical care, health-care services, preventive health measures or tobacco use control. The director shall be the administrative officer of the Office of Tobacco Control, and shall perform the duties that are required of him or her by law and such other duties as may be assigned to him or her by the State Board of Health. The director shall receive such compensation as may be fixed by the State Board of Health, subject to the approval of the State Personnel Board.

(2) The State Health Officer may employ such other persons as may be necessary to carry out the provisions of this chapter. The compensation and the terms and conditions of their employment shall be determined by the State Board of Health in accordance with applicable state law and rules and regulations of the State Personnel Board.

SOURCES: Laws, 2007, ch. 514, § 15, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

§ 41-113-7. Duties of Office of Tobacco Control.

The Office of Tobacco Control shall perform the following duties, with the advice of the Mississippi Tobacco Control Advisory Council:

(a) Develop and implement appropriate policies and procedures for the operation of the tobacco education, prevention and cessation program;

(b) Develop and implement a five-year strategic plan for the tobacco education, prevention and cessation program;

(c) Develop and maintain an annual operating budget and oversee fiscal management of the tobacco education, prevention and cessation program;

(d) Execute any contracts, agreements or other documents with any governmental agency or any person, corporation, association, partnership or other organization or entity that are necessary to accomplish the purposes of this chapter;

(e) Receive grants, bequeaths, gifts, donations or any other contributions made to the office to be used for specific purposes related to the goals of this chapter;

(f) Submit an annual report to the Legislature regarding the operation of the office;

(g) Submit to the State Auditor any financial records that are necessary for the Auditor to perform an annual audit of the office as required by law; and

(h) Take any other actions that are necessary to carry out the purposes of this chapter.

SOURCES: Laws, 2007, ch. 514, § 16, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References — Mississippi Tobacco Control Advisory Council, see § 41-113-9.

§ 41-113-9. Mississippi Tobacco Control Advisory Council created; qualifications and appointment of members; terms of office; vacancies; meetings; compensation.

(1) There is created the Mississippi Tobacco Control Advisory Council, which shall consist of thirteen (13) members. The thirteen (13) members of the advisory council shall consist of the following:

(a) Four (4) members appointed by the Governor, with one (1) member from a list of three (3) physicians recommended by the Mississippi State Medical Association, one (1) member from a list of three (3) individuals recommended by the Mississippi Chapter of the American Heart Association, and two (2) individuals who are not affiliated with the tobacco industry who possess knowledge, skill, and prior experience in scientifically proven smoking prevention, reduction and cessation programs, health-care services or preventive health measures;

(b) Two (2) members appointed by the Lieutenant Governor, with one (1) member from a list of three (3) nurses recommended by the Mississippi Nurses' Association, and one (1) member from a list of three (3) individuals recommended by the Mississippi Chapter of the American Lung Association;

(c) Two (2) members approved by the Speaker of the House of Representatives, with one (1) member from a list of three (3) social workers recommended by the Mississippi Chapter of the National Association of Social Workers (NASW), and one (1) member from a list of three (3)

individuals recommended by the Mississippi Chapter of the American Cancer Society;

(d) The Attorney General, or his or her designee;

(e) The State Superintendent of Public Education, or his or her designee;

(f) The Vice-Chancellor of Health Affairs of the University of Mississippi Medical Center, or his or her designee;

(g) The Dean of the College of Health at the University of Southern Mississippi, or his or her designee; and

(h) The Administrator of the School of Health Sciences of the College of Public Service at Jackson State University, or his or her designee.

(2) The Lieutenant Governor shall appoint one (1) member of the Senate and the Speaker of the House shall appoint one (1) Representative to attend meetings of the Tobacco Control Advisory Council.

(3) For those members that are required to be appointed from lists of individuals recommended by certain nominating groups, if none of the recommended names are acceptable to the appointing official, then the nominating group shall submit another list of three (3) different individuals until an acceptable individual is submitted to the appointing official.

(4) The members who are state officials or university officials shall serve as members for as long as they hold the designated office or university position. The appointed members shall serve for terms that are concurrent with the terms of the appointing officials, or until their successors are appointed and qualified.

(5) Any vacancy in an appointed member position shall be filled within thirty (30) days of the vacancy by the original appointing official, and the individual appointed to fill the vacancy shall meet the same qualifications as required for the former member.

(6) The initial appointments to the advisory council shall be made not later than forty-five (45) days after March 30, 2007, and the first meeting of the advisory council shall be held within sixty (60) days after March 30, 2007, at a time, date and location specified by the State Board of Health.

(7) The advisory council shall annually elect a chairman from among its members. The advisory council shall meet at least quarterly. A quorum for meetings of the advisory council shall be a majority of the voting members of the advisory council. The members of the advisory council shall receive the per diem compensation provided under Section 25-3-69 plus expense reimbursement as provided under Section 25-3-41 for attending meetings and necessary business of the advisory council.

(8) The Mississippi Tobacco Advisory Council shall advise and make recommendations to the State Board of Health regarding rules and regulations promulgated pursuant to this program.

SOURCES: Laws, 2007, ch. 514, § 17, eff from and after passage (approved Mar. 30, 2007.)

Editor's Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be

in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References — Mississippi Tobacco Control Advisory Council to advise Office of Tobacco Control on performance of duties, see § 41-113-7.

§ 41-113-11. Tobacco Control Program Fund created.

(1) There is established in the State Treasury a special fund to be known as the Tobacco Control Program Fund, which shall be comprised of the funds specified in subsection (2) of this section and any other funds that are authorized or required to be deposited into the special fund.

(2) From the tobacco settlement installment payments that the State of Mississippi receives during each calendar year, the sum of Twenty Million Dollars (\$20,000,000.00) shall be deposited into the special fund.

(3) Monies in the fund shall be expended solely for the purposes specified in this chapter. None of the funds in the special fund may be transferred to any other fund or appropriated or expended for any other purpose.

(4) All income from the investment of the funds in the special fund shall be credited to the account of the special fund. Any funds in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

SOURCES: Laws, 2007, ch. 514, § 18, eff from and after passage (approved Mar. 30, 2007.)

Editor’s Note — Laws of 2007, ch. 514, § 22 provides as follows:

“SECTION 22. This act shall take effect and be in force from and after June 30, 2007, except for Sections 1 and 2 and Sections 13 through 18, which shall take effect and be in force from and after the passage of this act.” Laws of 2007, ch. 514 was approved on March 30, 2007.

Cross References — Trust fund for the deposit of funds received by the State of Mississippi as a result of the tobacco settlement, see § 43-13-405.

CHAPTER 115

Tanning Facilities

SEC.

41-115-1. Use of tanning device at tanning facility by children under eighteen years of age.

§ 41-115-1. Use of tanning device at tanning facility by children under eighteen years of age.

(1) As used in this section:

(a) "Tanning device" means any equipment that emits radiation used for tanning of the skin, such as a sun lamp, tanning booth or tanning bed, and includes any accompanying equipment, such as protective eyewear, timers and handrails; and

(b) "Tanning facility" means any place where a tanning device is used for a fee, membership dues, or any other compensation.

(2) A child under fourteen (14) years of age shall not use a tanning device at a tanning facility unless the child's parent or legal guardian has provided written consent to the tanning facility and the parent or guardian is physically present at the tanning facility during the entire time that the child uses a tanning device at the tanning facility. The parent or guardian shall sign the consent form in the presence of the operator of the tanning facility, and that consent may be revoked at any time by the parent or guardian. The parent or guardian shall state on the consent form his or her relationship with the child and the age of the child. If the parent or guardian revokes the consent, the child shall not use a tanning device at a tanning facility until the child's parent or legal guardian has provided additional written consent in accordance with the requirements of this subsection.

(3) A child fourteen (14) years of age or older but under eighteen (18) years of age shall not use a tanning device at a tanning facility unless the child's parent or legal guardian has provided written consent to the tanning facility. The tanning facility may accept proof of the child's age from any valid source. The parent or guardian shall sign the consent form in the presence of the operator of the tanning facility, and that consent is valid for one (1) year from the date of signature, unless the consent is revoked by the parent or guardian. The consent may be revoked at any time by the parent or guardian. The parent or guardian shall state on the consent form his or her relationship with the child and the age of the child, and shall specify the maximum number of times that the child may use a tanning device at the tanning facility during the one-year period. After the expiration of the one-year period, or if the parent or guardian revokes the consent, the child shall not use a tanning device at a tanning facility until the child's parent or legal guardian has provided additional written consent in accordance with the requirements of this subsection.

(4) Each tanning facility shall:

(a) Maintain the written consent forms of the parents or guardians for a period of not less than two (2) years, and make the forms available to law enforcement personnel for inspection upon request; and

(b) Make written, electronic or digital records showing the dates and duration of use of a tanning device at the tanning facility by children under eighteen (18) years of age, maintain those records for a period of not less than two (2) years, and make the records available to law enforcement personnel for inspection upon request.

(5) This section does not apply to a licensed health-care professional who uses a tanning device for the treatment of patients, if that use is within the lawful scope of practice of the health-care professional.

SOURCES: Laws, 2009, ch. 446, § 1, eff from and after July 1, 2009.

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Administrator.

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Adult.

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Use in sudden cardiac death cases,
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Construction.

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Covering practitioner.

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Critical access hospital.

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Cross connection.

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Delivery.

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Dispenser.

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Distribute.

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Distributor.

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Ephedrine.

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Executive officer.

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Eye bank.

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Federal agency.

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First responder.

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First responders vaccination program,
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Freestanding.

Ambulatory surgical facilities,
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Birthing centers, §41-77-1.

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Generator.

Individual on-site wastewater disposal
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Guardian.

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Health care.

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Health-care institution.

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Hospital facility.

Hospital equipment and facilities
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Hotel.

Controlled substances, §41-29-313.

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Identification card.

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Individual instruction.

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Individualized family service plan.

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Infectious or communicable disease.

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Institutional health services.

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Intercept.

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Interested party.

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Interested person.

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Intermediate care facility for the mentally retarded.

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Invalid vehicle.

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Investigative or law enforcement officer.

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Judge of competent jurisdiction.

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Knows.

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Lead agency.

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Local community.

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Maximum contaminant level.

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Medical control.

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Commitment of alcoholics and drug
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Medical treatment.

Abortion complication reporting act,
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Mentally ill person.

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Minors.

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Misbranded parcel, package or container.

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Mississippi qualified health center.

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National primary drinking water regulations.

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Organ procurement organization.

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Other communication.

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Owner.

Community hospitals, §41-13-10.

Palliative care.

Hospice law, §41-85-3.

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Parent.

Anatomical gifts, §41-39-103.

Early intervention services for infants and toddlers, §41-87-5.

Part.

Anatomical gifts, §41-39-103.

Partial-birth abortion, §41-41-73.

Participate.

Health care rights of conscience, §41-107-3.

Participating agencies.

Early intervention services for infants and toddlers, §41-87-5.

Participating hospital institution.

Hospital equipment and facilities authority, §41-73-5.

Patient.

Hospice law, §41-85-3.

Hospital records, §41-9-61.

Pay.

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Payment.

Health care rights of conscience, §41-107-3.

Pediatric skilled nursing facility.

Health care certificate of need law, §41-7-173.

Pen register, §41-29-701.

Performance-based system.

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Permit.

Emergency medical services, §41-59-3.

Person.

Anatomical gifts, §41-39-103.

Health care certificate of need law, §41-7-173.

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Uniform controlled substances law, §41-29-105.

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Uniform controlled substances law, §41-29-105.

Precursor drug or chemical.

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Primary care.

Mississippi qualified health center grant program, §41-99-1.

Primary physician.

Health-care decisions, §41-41-203.

Primary service agency.

Early intervention services for infants and toddlers, §41-87-5.

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Probable gestational age of unborn child.

Informed and voluntary consent to abortion, §41-41-31.

Proceeding.

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Procurement organization.

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Production.

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Program.

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Pronouncement of death.

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Property of the generator.

Individual on-site wastewater disposal system law, §41-67-2.

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Prospective donor.

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Provider.

Health care certificate of need law, §41-7-173.

Pseudoephedrine.

Restrictions on purchase and sale of methamphetamine precursors, §41-29-315.

Psychiatric hospital.

Health care certificate of need law, §41-7-173.

Psychiatric residential treatment facility.

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Public water system.

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Qualified homeowner.

Individual on-site wastewater disposal system law, §41-67-2.

Reasonably available.

Anatomical gifts, §41-39-103.

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Recipient.

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Records.

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Evaluation and review of professional health services providers, §41-63-1.

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Residence.

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Rural areas.

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Rural health network.

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Rural hospital.

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Sales.

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Sell.

Uniform controlled substances law, §41-29-105.

Selling.

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Semi-public water system.

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Service area.

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Service grant.

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Sign.

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State.

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State department of health.

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